SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 1522 1527

ANNBAR ASSOCIATES, a Co-Partnership, CONTINENTAL BUILDING & OPERATING CO., INC., a Corporation,
Appellants,

vs.

WEST SIDE REDEVELOPMENT CORPORATION, a Corporation, CITY OF KANSAS CITY, MISSOURI, a Municipal Corporation, and NORMAN H. ANDERSON, Attorney General, State of Missouri,
Appellees.

JURISDICTIONAL STATEMENT

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Appellees.

JURISDICTIONAL STATEMENT

A. OPINIONS BELOW

Opinions delivered in the Court below are:

1. Opinion of the Supreme Court of Missouri reported: *Annbar Associates* v. *West Side Redevelopment Corporation,* (Mo. Sup., 1965) 397 S.W. 2d 635. A copy of said opinion is attached hereto as "Appendix A".

2. Opinion of the Circuit Court of Jackson County, Missouri, Division 5, not officially reported. A copy of said opinion is attached hereto as "Appendix B".

B. JURISDICTION

1. The nature of the proceeding herein appealed: This is a suit for a declaratory judgment, pursuant to Sec. 527.010, Mo. R.S., 1959, as amended, declaring that the following urban redevelopment laws fail to provide for fulfillment of a public purpose and grant discriminatory powers of eminent domain and discriminatory tax relief and therefore violate the Fourteenth Amendment to the Constitution of the United States:

Committee Substitute for Ordinance No. 29352 passed by the City Council of Kansas City, Missouri, on November 15, 1963, hereinafter referred to as Ordinance 29352;

Chapter 61, Revised Ordinances of Kansas City, Missouri, 1956, as amended, hereinafter referred to as Chapter 61;

Chapter 353, Revised Statutes of Missouri, 1959, as amended, hereinafter referred to as Chapter 353.

2. The date of the judgment sought to be reviewed and the time of its entry was December 13, 1965. Appellants' Motion for Rehearing was overruled on January 10, 1966. The Notice of Appeal to the Supreme Court of the United States was filed on March 28, 1966, in the Supreme Court of Missouri.

3. The statutory provision believed to confer jurisdiction of the appeal on the Supreme Court of the United States is Title 28 U.S.C. Section 1257(2).

4. Cases which sustain the jurisdiction of the Supreme Court of the United States are:

Charleston Federal Savings & Loan Association v. *Alderson*, (1945) 324 U.S. 182, 184, 65 S. Ct. 624, 627, 89 L. Ed. 857;

Home Insurance Co. v. *Augusta*, (1876) 93 U.S. 825, 826, 3 Otto 116;

Jamison v. *State of Texas*, (1943) 318 U.S. 413, 414, 63 S. Ct. 669, 671, 87 L. Ed. 869;

Whitfield v. *State of Ohio*, (1936) 297 U.S. 431, 436, 56 S. Ct. 532, 533, 80 L. Ed. 778;

James Stewart & Co. v. *Sandrakula*, (1940) 390 U.S. 94, 98, 60 S. Ct. 431, 432, 84 L. Ed. 596.

C. STATUTES INVOLVED

The validity of the following statutes of the State of Missouri is involved in the appeal:

1. Chapter 353, R.S. Mo., 1959, as amended, Vernon's Annotated Missouri Statutes, Vol. 17, p. 889 et seq., text thereof set out in "Appendix C" hereto.

2. Chapter 61, Revised Ordinances of Kansas City, Missouri, 1956, as amended, p. 679 et seq., text thereof set out in "Appendix D" hereto.

3. Committee Substitute for Ordinance No. 29352 passed by the City Council of Kansas City, Missouri, on November 15, 1963, pertinent text thereof set out in "Appendix E" hereto (Section XIV, Section XVII, Section XXII; Second Supplemental Contract).

D. QUESTIONS PRESENTED

1. Do Chapter 353 and Chapter 61 violate the equal protection clause of the 14th amendment to the Constitution of the United States because said chapters grant the special privilege of eminent domain to a private urban redevel-

opment corporation without requiring the achievement of a public benefit or purpose in that Section 353.150-4 of Chapter 353 and Section 61.230(c) of Chapter 61 expressly allow such urban redevelopment corporation to sell or dispose of any or all of the real property it has acquired by eminent domain, at any time, and the purchaser may own the land free from any of the conditions or restrictions or provisions of said chapters respectively? If so,

A. Can such defect be cured; and

B. Is it cured by a provision, not required by but contrary to said Chapter 353 and Chapter 61, in a contract between the City and the redevelopment corporation, which contract is approved by a special ordinance enacted pursuant to said Chapters 353 and 61, which contract provision requires the redevelopment corporation, "its successors and assigns", to complete the redevelopment clearance and construction notwithstanding sale of the land?

2. Do Chapter 353, Chapter 61, and Ordinance 29352 violate the equal protection clause of the 14th amendment to the Constitution of the United States because said chapters and ordinance grant the special privilege of eminent domain to a private urban redevelopment corporation without requiring the achievement of a public benefit or purpose, in that they permit abandonment of all restrictions on use of property acquired by eminent domain after completion of construction of a redevelopment project, without any determination or procedure for determination at the time of such abandonment of whether restrictions are deemed in the public interest?

3. Do Ordinance 29352 and Chapter 61 violate the equal protection clause of the 14th amendment to the Constitution of the United States because said laws auto-

matically grant the benefit of tax relief to any purchaser of the redevelopment property, without regard to whether such purchaser is a redevelopment corporation formed for a public purpose, and without regard to whether such purchaser acquires the redevelopment property subsequent to clearance of blight and completion of construction, when no public benefit remains or is required to be served?

4. Does Ordinance 29352 violate the equal protection clause of the 14th amendment to the Constitution of the United States because it permits evasion of the earnings restriction imposed and required to be imposed on the lessee of the redevelopment project during the tax relief period in that, in the event of sale of the redevelopment project or dissolution of the original redevelopment corporation, the lessee is freed from any restriction on earnings?

E. STATEMENT

The original plaintiffs below, appellants in this Court, are Annbar Associates, a partnership which owns or leases and pays ad valorem real estate taxes on the properties comprising the Muehlebach Hotel in Kansas City, Missouri, and Continental Building & Operating Co., Inc., a corporation which leases, and pays such taxes on the Continental Hotel in said city (R. 58, 59). Appellants seek a declaratory judgment declaring Chapter 353, Chapter 61, and Ordinance 29352 to be contrary to and in violation of the 14th amendment to the Constitution of the United States. Chapter 353, an urban redevelopment corporation law, is a state enabling law generally authorizing cities to enact ordinances whereby a privately owned urban redevelopment corporation, formed for a public

purpose and limited in its earnings to 8 per cent per annum of its cost of the redevelopment project, may procure "blighted" land by exercise of the power of eminent domain and receive certain tax abatement benefits on improvements constructed thereon for so long as the land is owned and used by it in accordance with an approved development plan, but not longer than twenty-five years. Chapter 61 is an ordinance of the City of Kansas City, Missouri, hereinafter referred to as "City", enacted pursuant to Chapter 353 and setting forth the procedure for approval of an urban development plan by City. Ordinance 29352 is a special ordinance of City approving the development plan of respondent West Side Redevelopment Corporation, hereinafter called "West Side", for the construction of a Hilton Hotel complex in such proximity to the hotels of appellants as to be competitive with the business enterprises of appellants (R. 59) Ordinance 29352 authorizes City to execute a contract with West Side governing performance of the development plan, and said contract has been executed (R. 68).

Appellants have attacked the validity of Chapter 353, Chapter 61, and Ordinance 29352 on the grounds that said laws violate the equal protection clause of the 14th amendment to the Constitution of the United States because they arbitrarily grant special privileges of eminent domain and tax relief to another taxpayer and competitor, without requiring the achievement of a public benefit or purpose. At the outset it should be noted that appellants do not question the now generally accepted principle that urban redevelopment and slum clearance are public uses justifying the exercise of the power of eminent domain and the granting of tax relief. Appellants claim (1) that the laws in question do not require the accomplishment of that public purpose and hence cannot,

constitutionally, grant said privileges; (2) permit private profit as the primary purpose, with possible public purpose of questionable fulfillment as an incident thereto.

Facts Pertaining to Question No. 1

It is not disputed that Chapter 353 and Chapter 61 authorize an urban redevelopment corporation to acquire land by exercise of the power of eminent domain (Section 353.130 of Chapter 353; Section 61.160 of Chapter 61).

Chapter 353 and Chapter 61 also expressly permit such urban redevelopment corporation to sell or dispose of any or all of the property it has acquired by eminent domain, at any time and without regard to accomplishment of a public purpose, and the purchaser may own the land free from any of the conditions or restrictions or provisions of said chapters. Thus, Section 353.150-4 of Chapter 353 provides in pertinent part:

> "*Any urban redevelopment corporation may sell or otherwise dispose of any or all of the real property acquired by it for the purposes of a redevelopment project. In the event of the sale or other disposition of real property* of any urban redevelopment corporation . . . and the purchaser of such real property of such redevelopment corporation shall continue to use, operate and maintain such real property in accordance with the provisions of any development plan, the legislative authority of any city affected by the provisions of this chapter, may grant the partial tax relief provided in Section 353.110; *but if such real property shall be used for a purpose different than that described in the redevelopment plan, or in the event that the purchaser does not desire the property to continue under the redevelopment plan, or if the legislative authority shall refuse to grant the purchaser continuing tax relief, the real property* shall be assessed for ad valorem taxes upon the full true

> value of the real property and *may be owned and operated free from any of the conditions, restrictions or provisions of this chapter.*" (Emphasis ours).

Section 61.230(c) of Chapter 61 similarly provides:

> "An urban redevelopment corporation may sell or otherwise dispose of any or all of the real property acquired by it for the purpose of a redevelopment project . . . If such real property shall be used for a purpose different than that described in the redevelopment plan, or if the purchaser does not desire the property to continue under the redevelopment plan . . . (or if the tax relief is terminated for one reason or another) . . . the real property . . . may be owned and operated free from any of the conditions, restrictions or provisions of this chapter."

Thus, Chapter 353 and Chapter 61 permit a redevelopment corporation to acquire property by exercising the power of eminent domain and to sell said property immediately, free from all restrictions.

West Side and the Court below have taken the position that although Chapter 353 and Chapter 61 permit sale of the redevelopment property free from restrictions, such defect can be and is cured by a provision (not required by, but expressly contrary to the above quoted provisions of Chapter 353 and Chapter 61) contained in a contract between the City and the redevelopment corporation, which contract is approved by Ordinance 29352, the special ordinance enacted pursuant to said Chapters 353 and 61. Thus the Supreme Court of Missouri states in its opinion, pages A26, A27, Appendix A:

> "Section 353.150-4 and 61.230(c) do permit sale of real property acquired by the redevelopment corporation for a redevelopment project. But we must consider the whole of the Redevelopment Ordinance (Chapter 61) in determining whether safeguards or

> restrictions have been provided to assure that a public purpose will be served. In that connection we may consider the provisions of Sub. Ord. 29352 . . . It (Ordinance 29352) also requires that West Side, its successors and assigns, complete clearance of blight from the area and construction of the improvements. The City council has thus, by legislative determination, adopted this *means* of . . . assuring accomplishment of the primary object and and public purpose of the law." (Court's emphasis).

The provision of Ordinance 29352 upon which the Supreme Court of Missouri and West Side rely to cure the defect of sale without restriction in the enabling laws is not a part of Ordinance 29352 in chief but is Paragraph 16(b) of the "Second Supplemental Contract", Appendix E, the contract between City and West Side pertaining to the redevelopment project, which contract was authorized by Section 3, Article XXII of Ordinance 29352. Said Paragraph 16(b) provides:

> "That West Side, its successors and assigns, shall complete the demolition of all existing buildings and improvements pursuant to paragraph 5 hereof, and complete the construction of the new buildings and improvements included in the First Stage of the project as described in paragraph 2(a) hereof, notwithstanding the termination of the tax relief under paragraph 9 hereof, or any other provision of the Contract to the contrary."

Another paragraph (Paragraph 14) in said contract is directly contrary to said paragraph 16(b) and follows Section 353.150-4 and Section 61-230(c) to provide in pertinent part:

> "That in the event of the sale or other disposition of any or all of the real property of West Side, its successors or assigns . . . if such real property shall be used for a purpose different than that described in

> the Development Plan, as amended, or if the purchaser does not desire the property to continue under the Development Plan, as amended, the real property . . . may be owned and operated free from any of the conditions, restrictions, or provisions of the Urban Redevelopment Corporations Law of the State of Missouri, of the Urban Redevelopment Ordinance, of any rules or regulations adopted pursuant thereto, of the Ordinance approving the Development Plan, as amended, of the Development Plan, as amended, and of this Contract."

Furthermore, Ordinance 29352 and the Supplemental Contract are not required to be recorded with the Recorder of Deeds of the County in which the land is located so as to constitute covenants running with the land. A purchaser from West Side receives no certificate of necessity, no special ordinance, and makes no contract with the city. Thus, a purchaser from West Side, cannot be bound by any restrictions on the redevelopment property unless West Side chooses to put such restriction in its deed to such purchaser. No public authority oversees or supervises such sale.

This Question No. 1 was first raised by Appellants' Petition for Declaratory Judgment and for an Injunction at paragraphs 9 and 10 thereof (R. 5, 6). The judgment of the Trial Court was in favor of the validity of Chapter 353 and Chapter 61 on this question (Paragraphs 1-12, Conclusions of Law, Appendix D). Paragraph 12 of the Conclusions of Law of the Trial Court specifically states:

> "The granting of the power of eminent domain to urban redevelopment corporations pursuant to the provisions of the Redevelopment Law (Chapter 353) and Redevelopment Ordinance (Chapter 61) does not violate either the Missouri or United States' Constitutions in that a public purpose is required to be fulfilled in all events."

This ruling was appealed by appellants to the Supreme Court of Missouri, considered and decided against appellants' contention on said question number 1 as indicated by the Court's opinion, pages A26, A28, Appendix A, wherein it is specifically stated:

> "Annbar and Continental contend specifically that Section 353.150-4 of the Redevelopment Law and Section 61.230(c) of the Redevelopment Ordinance are in violation of the several provisions of the State and Federal Constitutions, because those sections permit the sale of property acquired by eminent domain without assurance that a public purpose or benefit will be served . . . We hold that the challenged sections of the Redevelopment Law and Redevelopment Ordinance are not contrary to or in violation of the constitutional provisions referred to by Appellants."

Facts Pertaining to Question No. 2

Without regard to the right of sale of redevelopment property without restrictions, discussed under Question Number 1 above, Chapter 353 and Chapter 61 permit abandonment of all restrictions on use of property acquired by eminent domain after the completion of construction of a redevelopment project, without any determination or procedure for determination at the time of such abandonment as to whether further restrictions are deemed in the public interest. This fact is not in dispute.

Section 353.110-2 provides that upon completion of the redevelopment project, an urban redevelopment corporation may elect to pay ad valorem taxes on the full value of the property from the date of completion of the project, and from that date:

> "Such real property shall be owned and operated free from any of the conditions, restrictions or provisions

of this chapter, and of any ordinance, rule or regulation adopted pursuant thereto . . ."

Chapter 61 and Ordinance 29352 contain identical provisions (Section 61.240(d), Appendix D; Paragraph 9(c), Supplemental Contract, Appendix E). In ruling on this question, the Supreme Court of Missouri has held that the city council may determine in advance that no restrictions in the public interest will be necessary after completion of the redevelopment construction (page A25, Appendix A).

Question Number 2 was first raised in plaintiffs' Petition for Declaratory Judgment and for an Injunction, Paragraphs 9 and 10 thereof (R. 5, 6). Said question was decided adversely to plaintiffs by the Trial Court as indicated by Paragraphs 7 to 12 of the Trial Court's Opinion, Appendix B. This question was raised on appeal to the Supreme Court of Missouri and decided adversely to appellants, as indicated by the Opinion of the Supreme Court of Missouri, page A25, Appendix A, wherein it is stated:

> "What restrictions are required by Article VI, § 21, to be imposed when property taken is sold? And who may impose such restrictions? That section provides that property acquired by eminent domain for the above purposes may be sold 'subject to *such restrictions as may be deemed in the public interest.*' (Emphasis supplied). The mandate of the construction is not that restrictions be imposed; the mandate is that either of the legislative bodies mentioned impose *such* restrictions as that body *may* deem in the public interest. That is: the legislative branch may deem it in the public interest that the property be sold subject to no restrictions." (Court's emphasis).

Facts Pertaining to Question No. 3

Section 353.110 of Chapter 353 provides that a city may grant tax relief on redevelopment property:

> "so long as the real property is owned by an urban redevelopment corporation and used in accordance with a development plan authorized by the legislative authority of such city." (Emphasis ours).

Section 353.150-4 provides that in the event of sale of the redevelopment property and the purchaser of such real property shall continue to use such property in accordance with the provisions of the development plan:

> "the legislative authority may grant the partial tax relief *provided in Section 353.110* . . .". (Emphasis ours).

Chapter 61 and Ordinance 29352, enacted pursuant to said Chapter 353, grant tax relief automatically to any purchaser of the redevelopment property, without regard to whether or not it is an urban redevelopment corporation:

> "so long as the property is used in accordance with the provisions of the development plan." (Section 61.230(c) of Chapter 61, Appendix D; paragraph 9, paragraph 14, Supplemental Contract of Ordinance 29352, Appendix E).

Thus, contrary to the express provision of Section 353.110 quoted above, limiting the granting of tax relief to an urban redevelopment corporation, Chapter 61 and Ordinance 29352 arbitrarily grant the benefit of tax relief to a private individual, not a redevelopment corporation formed for a public purpose with 8 per cent per annum of original cost restriction on earnings, without requiring the accomplishment of any corresponding public benefit or purpose by such private purchaser, because he may acquire the redevelopment property when no public benefit remains or is required to be served.

Further, Section 353.030(11) of Chapter 353, Appendix C, and Section 61.190 of Chapter 61, Appendix D, both limit

net earnings from any redevelopment project to a sum equal to 8% upon the entire cost thereof, whereas Paragraph 10(a) of the Second Supplemental Contract, Appendix E, restricts the earnings of a successor to West Side to 8% per annum of the cost to such successor or assign. Thus, the interest of the public in recovering all earnings in excess of earnings limited to 8% is allowed to be evaded by said provision in said Second Supplemental Contract. So long as West Side owns the redevelopment project, the public's interest is in earnings in excess of 8% of $8,270,000.00, Appendix E, page A108. After a sale or assignment by other means by West Side to a third party, the public's interest in excess earnings may be cut down to earnings in excess of 8% of $20,000,000.00 or some such other inflated cost.

Said Question Number 3 was first raised by plaintiffs in Paragraph 21 of their Petition for Declaratory Judgment and for an Injunction (R. 22). The Trial Court decided said question adversely to plaintiffs, appellants herein, as evidenced by Paragraph 33 of the Trial Court's "Conclusions of Law", Appendix B. Said question was raised by appellants on appeal to the Supreme Court of Missouri and was decided adversely to appellants by that Court as evidenced in its opinion, pages A32, A33, Appendix A, wherein it is stated:

> "Annbar and Continental, in point VII of their brief, contend that Sub. Ord. 29352, grants a tax exemption in violation of Article X, § 6 and Article I, § 2, of the Constitution of Missouri and the equal protection clause of the Fourteenth Amendment to the Constitution of the United States in that the ordinance grants tax relief to: (1) a purchaser from West Side, and (2) the lessee. Specifically, they say that under the Redevelopment Law and Redevelopment Ordinance the only person who can be granted partial tax relief is an urban redevelopment corporation, but that this ordinance grants tax relief to any

purchaser from West Side. The ordinance *does* provide that the tax relief granted real property of West Side under the Redevelopment Law and Ordinance shall inure to a purchaser, meaning *any* purchaser. But, that is not to say that the granting of such relief is in violation of the constitutional provisions referred to . . . We now hold that . . . neither § 353.150-4 nor Sub. Ord. 29352 conflict with Article X, § 6, or the equal protection clause of either constitution." (Court's emphasis).

Facts Pertaining to Question No. 4

Chapter 353 and Chapter 61 require the earnings from a redevelopment project to be limited as follows:

> "The net earnings of the corporation (urban redevelopment corporation) shall be limited to an amount not to exceed 8 per cent per annum of the cost to such corporation of the redevelopment project including the cost of the land, or the balances of such costs as reduced by amortization payments; provided, that the net earnings derived from any redevelopment project shall in no event exceed a sum equal to 8 per cent per annum upon the entire cost thereof." (Section 353.030(11) of Chapter 353, Appendix C, and Section 61.190 of Chapter 61, Appendix D).

Ordinance 29352 and its Supplemental Contract, Appendix E, provide that West Side, after acquiring the redevelopment area, will lease the same to a lessee under a lease requiring said lessee to construct improvements thereon at its cost in accordance with the development plan (Section XIV, Ordinance 29352). In purporting to give effect to and fulfill the above quoted requirement of an earnings limitation where the major cost of the redevelopment project is to be borne not by the redevelopment corporation, but by its lessee, the following provision (Paragraph 23) was added to the Supplemental Contract:

> "That the lease referred to in Section XIV of the Development Plan as amended, shall provide that the lessee thereunder will pay, as additional rent to West Side, within One Hundred Twenty (120) days after termination of the tax relief period provided in paragraph 9 hereof, all the net earnings of the lessee derived from the project during such tax relief period in excess of 8 per cent per annum of the cost of the project to the lessee under the Development Plan of West Side, as amended . . .".

The foregoing provides only colorable compliance by the lessee with the earnings restriction because the lessee is only so restricted so long as West Side is the lessor. In the event that West Side is dissolved or the redevelopment project is sold, or West Side's interests are assigned, the lessee is freed from any restrictions on earnings because said paragraph provides that the lessee's excess earnings shall be paid as additional rent *only to West Side,* not to its successors and assigns. Such an omission in other circumstances could conceivably be construed to be an oversight and the intention of the parties to be that in the event of assignment, sale of the redevelopment project, or dissolution of West Side, such excess earnings of the lessee would still be payable either to the City or to the successors and assigns of West Side. Not so in the instant case where it is apparent that the omission of the words "successors and assigns" was deliberate. In every other paragraph of the Supplemental Contract, wherever the rights and obligations of West Side are referred to, the words "successors and assigns" are used immediately following "West Side". Those words are omitted in only two paragraphs of the Supplemental Contract: Paragraphs 20 and 23. Paragraph 20 provides:

> "That West Side: (i) shall not control the lessee under the lease referred to in Section XIV of the Development Plan, as amended; (ii) shall not be con-

trolled by such lessee; (iii) shall not be under common control with such lessee."

Paragraph 23 of said contract, quoted above, limits the earnings of the lessee only by requiring excess of 8% of cost to be paid to West Side. There is no general provision to the effect that this contract shall be binding upon and inure to the benefit of West Side, its successors and assigns. The more cumbersome and awkward method of inserting the words "successors and assigns" was adopted throughout the contract for the sole purpose of omitting those words and their effect in Paragraphs 20 and 23.

The net effect is that in the event of sale of redevelopment property or dissolution of West Side, the lessee will continue to obtain the benefits of tax relief on the redevelopment improvements constructed at its cost and for its benefit for an unknown period (as the term of the proposed lease is not revealed in Ordinance 29352) without a corresponding limitation on its earnings during such tax relief period.

This Question Number 4 was raised by plaintiffs in Paragraph 18 of their Petition for a Declaratory Judgment and for an Injunction (R. 17). It was decided adversely to plaintiffs by the Trial Court as indicated by Paragraph 33 of its "Conclusions of Law", Appendix B. Said question was raised by these appellants on appeal to the Supreme Court of Missouri and that Court decided said question adversely to appellants as indicated by its opinion, page A36, Appendix A, specifically stating:

> "We held above (referring to the quotation on page 14 of this Jurisdictional Statement taken from pages A32 and A33, Appendix A) that the fact that partial tax relief may inure to the benefit of a purchaser from West Side does not violate the constitutional provisions referred to; for the same reasons, we hold that such indirect or incidental relief as may inure to lessee does not violate those provisions."

F. THE QUESTIONS ARE SUBSTANTIAL

The single, fundamental issue raised in this appeal is: What legislative restrictions are necessary to assure that a private entity which acquires land by eminent domain for the public purpose of urban redevelopment, will devote such land to that public purpose. The decision of the Supreme Court of Missouri appealed from herein represents a marked departure from the rationale of previous urban redevelopment cases in that it permits private interests to determine to what extent the public interest is required to be served.

The case of *Berman* v. *Parker,* (1954) 348 U.S. 26, 75 S. Ct. 98, 102, 103, established that slum clearance and redevelopment of blighted areas, though achieved by means of private enterprise, is a public use justifying the exercise of the power of eminent domain. In that case, which upheld the validity of the District of Columbia Redevelopment Act, there was no doubt or issue but that the individual or corporation acquiring property by virtue of the power of eminent domain would be restricted in the use of such property and would be required to devote such property to the uses described in an approved development plan. The court specifically comments at page 101 of its Opinion (75 S. Ct.):

> "After the real estate has been assembled, the Agency is authorized to transfer to public agencies the land to be devoted to such public purposes such as streets, utilities, recreational facilities, and schools, Section 7(a), and to lease or sell the remainder as an entirety or in parts to a redevelopment company, individual, or partnership. Section 7(b), (f). *The leases or sales must provide that the lessees or purchasers will carry out the redevelopment plan and that 'no use shall be made of any land or real property included*

> *in the lease or sale nor any building or structure erected thereon' which does not conform to the plan.* Sections 7(d), 11." (Emphasis ours).

Although the issue of restrictions was not directly raised in the *Berman* case, it has been cited as authority for appellants' contention that when there will be no actual public use of land taken by eminent domain, there must be restrictions on its private use to assure some public benefit.

Thus, in *City and County of San Francisco* v. *Ross,* (Cal. Sup. 1955) 44 Cal. 2d 52, 279 P. 2d 529, 532, the Court held that the acquisition of land by the city to be leased to private individuals to construct a parking garage, without retaining the power to control charges or otherwise regulate operations in the public interest was for a private and not a public use and was not a proper exercise of the constitutional power of eminent domain. The Court cites and discusses *Berman* v. *Parker, supra,* and at p. 532 (279 P. 2d) states:

> "It is the stringent controls maintained over the properties sold or leased to private parties which distinguishes the Berman case from the present case. Such controls are designed to assure that use of the property condemned will be in the public interest. In the present case these controls are lacking.
>
> "The same reasoning is apparent in decisions in this state wherein the courts have attached significance to the control retained by governing bodies as indicative that public lands leased to private individuals were still serving a public purpose. In *City of Oakland* v. *Williams,* 206 Cal. 315, 274 Pac. 328, it appeared that tide lands were granted by the state to the City of Oakland for public purposes. In upholding a lease of some of that land to a private operator to conduct a warehouse thereon, the court set forth at length the terms of the lease which would insure performance

> by the lessee of the uses and purposes specified for which the city had been granted the lands. In *Redevelopment Agency of City and County of San Francisco* v. *Hayes*, 226 P. 2d 105, 122 the court held that the taking of land by eminent domain for public use was proper and that the intention that the land would be returned to private ownership but 'subject to restrictions protecting the public use' did not make it any less a public use."

Other courts in upholding the validity of redevelopment laws have relied upon and confirmed the necessity for continuing restrictions in order to justify a finding of public use.

Thus, in *Opinion of the Justices*, (Mass. Sup. 1956) 135 N.E. 2d 665, (l.c.) 666, 667, the Court states:

> "An urban redevelopment corporation is not an ordinary business corporation . . . their activities are strictly confined to the undertaking and carrying out of projects authorized by the housing board . . . and approved by local planning boards and mayors or selectmen . . . for the construction and maintenance of decent, safe, and sanitary dwellings upon substandard, decadent or blighted open areas which have been acquired or cleared in accordance with either the housing authority law . . . Such corporations must act under rules and regulations of the State Board of Housing, Section 4. They may take land by eminent domain for approved projects. Section 11. *They are subject in many respects to the control of public authorities. They are declared to be instrumentalities of the commonwealth* . . . It will be observed that the purposes for which urban redevelopment corporations are formed and which they are bound to carry out were classed by this court as public purposes in *Papadinis* v. *Somerville*, 331 Mass. 627, 121 N.E. 2d 714 . . . Since we are of the opinion that urban redevelopment corporations, although in a sense private corporations, perform functions for the

public benefit analogous to those performed by various other types of corporations commonly called the public service corporations, property owned by them and used in such service may receive favored treatment in the matter of taxation . . . The situation here present is readily distinguishable from that dealt with in *Opinion of Justices,* 332 Mass. 769, 126 N.E. 2d 795. In that instance, although the proposed plan had some public aspects, *the dominating purpose, was resale to private interests to which some of the tax advantages were to be extended.* The elimination of slums and blighted areas was not the primary object of the proposed statute. In the present instance the tax advantages are to continue only so long, not exceeding 40 years, as the project continues to be *operated under public regulation* and for the public benefit." (Emphasis ours).

Subsequently in considering another urban redevelopment plan in *Opinion of the Justices,* (1960) 168 N.E. 2d 858, the same Court re-affirms the reasoning of its 1956 opinion by referring to it and quoting from it at length, and at p. 870 states:

"That opinion thus treats as important, as a factor sustaining the proposed tax exemption, the *continuing regulation of the urban renewal projects by a public body,* in much the manner in which public utilities remain subject to regulation. With respect to projects outside Boston, regulation, as provided in c. 121A, by the housing board and the insurance commissioner, in their respective areas, will remain substantially unchanged by the present bill. Boston projects, although regulated by the authority (and the insurance commissioner in those matters relating to insurance company projects committed to him) rather than by the housing board also will be under substantially the same regulation as is applied to all projects by c. 121A. We enumerate the principal features of such continuing regulation . . . *These provisions for continuing regulations, taken together with*

> *the regulations for the original approval of projects would lend further support to a legislative declaration that such projects are for a public purpose.* See *Opinion of the Justices,* 334 Mass. 760, 135 N.E. 2d 665." (Emphasis ours).

The Supreme Court of Rhode Island in *Opinion to the Governors,* (1950) 76 R.I. 365, 70 A. 2d 817, held unconstitutional a statute authorizing a development authority to acquire land by eminent domain for a marina and auditorium to be operated by a private individual under lease from the authority without regulation in the public interest. At p. 820 (70 A. 2d) the Court states:

> "To permit such authority to lease the entire project to some private person, who thereafter would operate it for his own profit by fixing the fees and charges for its use and for services rendered without regulation in the public interest as public utility, would at once make it a private enterprise and would remove the element of primary public use or purpose which is essential if the act by which the project is authorized is to be considered valid."

Missouri is the first state to depart from the rationale of the foregoing cases and grant the power of eminent domain to private individuals and corporations for private projects without continuing restrictions in the public interest. Appellants seek to have the court disallow this departure because it violates the minimum requirements necessary to assure that property taken by eminent domain by a private corporation, as distinguished from a public authority, will be used for the public benefit for which it was taken, and permits such property to be sold, leased, or operated free from any restrictions and without regard to the public interest.

This is a matter of national importance because almost every state has adopted urban redevelopment laws in the

last 20 to 30 years. The most common means provided in said laws for the initiation and execution of redevelopment projects is by a public authority or commission which has the power to acquire land by condemnation and supervise its clearance and redevelopment. The other less common means to accomplish redevelopment of blighted areas is through a private redevelopment corporation which itself initiates plans for redevelopment and, subject to approval and authorization from a legislative body, acquires land by exercise of the power of eminent domain, which it then develops.

Only ten states in the United States other than Missouri have private redevelopment corporation laws: Illinois, Massachusetts, Wisconsin, Kentucky, Michigan, New Jersey, Minnesota, Ohio, New York, and Indiana. Not one of the private redevelopment corporation laws in said ten states permits a private corporation, such as West Side, to acquire land by eminent domain, and sell the land to a purchaser who may then use the land free and clear of restrictions. Not one of said laws permits a private corporation to acquire land by eminent domain and, upon physical completion of the redevelopment construction, to abandon its public purpose and thereafter own or sell the land free from any restrictions whatsoever, without a determination by some public authority at the time of such abandonment that no further restrictions are deemed necessary in the public interest. The laws in question here are unique and stand alone in granting these unconstitutional rights.

Illinois law on this subject provides in Section 260(4), Title 67-1/2, Smith Hurd Illinois Statutes, that no such private redevelopment corporation shall—

> ". . . sell, convey, or mortgage any real property *without the approval of the Redevelopment Commission.*

(5) Lease an entire building or entire tract of land in the development area to any person or corporation *without the approval of the Redevelopment Commission.*" (Emphasis ours).

Thus, the public agency set up by the Illinois statutes, the Redevelopment Commission, must first become familiar with the terms of sale, or mortgage, or lease, and must give approval thereto, with due regard for the public interest.

The law of Massachusetts, Chapter 121A, Section 11, Annotated Laws of Massachusetts, 1965, provides:

"Any such (private redevelopment) corporation may lease land . . . *with the approval of the housing board* . . . Any such corporation shall have power, *with the approval of the housing board,* to sell the whole or any part of the land . . . but such land, buildings or other structures may be sold only subject to the requirement that any change in the benefits and restrictions . . . shall not be valid unless approved in the manner provided in section six." (Emphasis ours).

Thus, in Massachusetts, not only is the approval of the public agency, the housing board, required, but the restrictions cannot be abandoned in any event—they may not be changed except subject to approval with fair consideration for the public interest.

The laws of Wisconsin, Kentucky, Michigan and New York are identical on this issue. They all contain the provision that:

"No redevelopment corporation shall: . . . (3) After a development has been commenced, sell, transfer, or assign any real property in a development area *without first obtaining the consent of the supervising agency* . . . (7) Lease an entire building or improvements in the development area to any person or corporation *without obtaining the approval of the super-*

vising agency, which may be withheld only if the lease is being made for the purpose of evading the provisions of this article . . .". (Emphasis ours). (Section 66.407, West's Wisconsin Statutes Annotated, 1965; Chapter 99.140, Baldwin's Kentucky Revised Statutes Annotated, Third Edition, 1963; Section 5.3058(7), Michigan Statutes Annotated, 1958 Revision; Section 206, Private Housing Finance Law, Consolidated Laws of New York Annotated, 1962).

Thus, no disposition of land obtained by eminent domain for redevelopment, can be made in those four states which bypasses the restrictions; and the supervising agency, a public agency, must approve the transfer or other disposition.

The laws of Minnesota (Sections 462.411 to 462.716, Minnesota Statutes Annotated, 1963), Ohio (Chapters 725 and 1728, Page's Ohio Revised Code Annotated, 1964) and New Jersey (Sections 40:55C-1 to 40:55C-29, 40:55C-40 to 40:55C-76, R. S. Cum. Supp. New Jersey, 1959, 1960, 1961) are similar in that they provide for the acquisition of the blighted area either by the municipality itself or by a land clearance authority. They require approval of the development plan by the municipality and permit disposition of the land by the municipality under and subject to said plan. Under the laws of said three states, the municipality or public authority can sell the land to a redeveloper but only subject to the condition that the purchaser must devote the land to the purposes and uses contained in the development plan. All three states provide in their respective laws for some tax relief, and in the event the redeveloper elects to abandon tax relief, he may be freed from only those conditions upon which the tax relief was granted—but the redeveloper is not released from the restrictions and obligations of the development plan by the yielding up of tax relief. The redevelopment

restrictions and conditions must be satisfied without regard to whether tax relief is in effect or not.

The tenth state other than Missouri that has a private redevelopment law, is Indiana. The Indiana statute (Section 25-4301 to 4308 Burns Indiana Statutes Annotated, 1960) is silent on the subject of restrictions in the event of the disposition of the property. However, Section 25-4305, provides that the redevelopment corporation must file a bond guaranteeing completion of the project in accordance with the plan. Indiana's law therefore protects the public interest with the deterrent of a heavy financial penalty. In a sense, the Indiana statute is not comparable to the Missouri statute at all because it deals with a residential or housing redevelopment purpose, limiting commercial uses in any development plan to 5 per cent or less of the area involved. The need for housing and the providing of the same under such laws has itself been considered a public benefit and therefore stands on different constitutional grounds for support.

It is a matter of common knowledge and a subject of numerous articles[1] in the past few years that the urban redevelopment projects and urban redevelopment laws, both state and federal, have been abused in many instances for private gain at the expense of the public interest. The restrictions provided in the laws of said 10 states, and omitted from the laws of Missouri in question

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1. Anderson, Dr. Martin, *The Federal Bulldozer*, The M. I. T. Press, 1964.
   Zimmer, Basil G., *Rebuilding Cities*, Quadrangle Books, 1964.
   Anderson, Dr. Martin, "Fiasco of Urban Renewal", *Harvard Business Review*, January, 1965.
   Hartman, Chester in *Journal of American Institute of Planning*, November, 1964.
   "Critics Rally Against Urban Renewal", *The National Observer*, 12-7-64.

here, are a means of preventing such abuses. If the unique laws attacked on this appeal are upheld, it will be an invitation to further abuses whereby certain business interests are given substantial advantages and privileges at the expense of existing established businesses and the public generally. To date there is no case, to appellants' knowledge, establishing the outer limits beyond which a government cannot go, in granting the exercise of the power of eminent domain and tax relief to private entities without restrictions and supervision in the public interest. Appellants respectfully request the court to consider the merits of this appeal so that this substantial federal question will be determined.

Respectfully submitted,

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APPENDIX

APPENDIX A

HENLEY, Judge.

This is an action in which plaintiffs-appellants seek: (1) a declaratory judgment that certain statutes of the State and ordinances of the City of Kansas City, Missouri, are unconstitutional; and, (2) an injunction to prevent defendants-respondents, West Side Redevelopment Corporation and the City of Kansas City from proceeding with a redevelopment project described in one of the ordinances attacked. Judgment was for defendants and plaintiffs appeal.

Two of the plantiffs-appellants are Annbar Associates and Continental Building & Operating Company, Inc., a corporation. Annbar Associates is a copartnership comprised of Ann Lubin Goldstein and Barbara Lubin Goldsmith, owners of the Muehlebach Hotel and Towers in Kansas City, and shall hereinafter be referred to as Annbar. Continental Building & Operating Company, Inc., is the lessee and operator of the Continental Hotel in Kansas City, and shall hereinafter be referred to as Continental. Neither owns property in the area sought to be redeveloped. Both pay ad valorem real estate taxes to the city.

The third plaintiff-appellant is Irene Tomlinson, hereinafter referred to as Tomlinson, who was permitted by the trial court to intervene as a party plaintiff over the objection of Annbar and Continental. Tomlinson is the owner of real property located within the area sought to be redeveloped.

The defendant-respondent, West Side Redevelopment Corporation, is an urban redevelopment corporation organized and existing under and by virtue of Chapter 353[1] and shall hereinafter be referred to as West Side. The other defendants-respondents are the City of Kansas City, Missouri, a constitutional charter city, hereinafter referred to as the City, and Norman H. Anderson, as Attorney General of the State.

By authority of the ordinances now under attack, the City and West Side on December 16, 1963, entered into a contract (hereinafter referred to as Supplemental Contract) providing for the clearance and redevelopment of a blighted area (hereinafter referred to as Redevelopment Area) located between the east line of Pennsylvania Avenue and the west line of Washington Street from the south line of Seventh Street to the north line of Tenth Street and a smaller tract at the southeast corner of the intersection of 9th and Washington Streets fronting approximately 300 feet on Washington and 265 feet on 9th; all containing approximately 7.88 acres, and being commonly referred to as the Quality Hill area. The Supplemental Contract contemplates the erection of a Hilton Hotel complex and convention facility in the Redevelopment Area within such proximity to the hotel properties of Annbar and Continental as to be competitive with their businesses.

Appellants pray that the court declare: (1) that Chapter 353 RSMo 1959 (hereinafter referred to as Redevelopment Law), and more particularly §§ 353.110(2) and 353.150, subd. 4 thereof, and Chapter 61 of the Revised Ordinances of Kansas City (hereinafter referred to as Redevelopment Ordinance), and more particularly §§ 61.230 (c) and 61.240(d) thereof[2] are contrary to the Constitu-

1. All references to statutes are to RSMo 1959 and V.A.M.S.

2. All references to ordinances are to the Revised Ordinances of Kansas City, Missouri.

tion of Missouri and in violation of the Constitution of the United States; (2) that Committee Substitute for Ordinance Number 29352 (hereinafter referred to as Sub. Ord. 29352) passed by the city council on November 15, 1963, is (a) contrary to the statutes and Constitution of Missouri and in violation of the Constitution of the United States, and, (b) contrary to the public policy of the state; and (3) that all are, therefore, null and void. As indicated, appellants also pray that West Side and City be enjoined from proceeding with the redevelopment project.

The case was submitted on the pleadings, a stipulation of facts to which was attached 27 exhibits, brief oral testimony, and exhibits consisting of depositions and documentary evidence. Upon submission, the court took the case under advisement and thereafter made findings of fact and conclusions of law, and entered its judgment. The stipulation contains the facts pertinent to the disposition of the main or basic issues in the case, many of the facts being incidentally related in the above introduction to the case. Other facts will be related as necessary in the course of this opinion. We have read or examined, and considered, all the evidence and exhibits which, according to a remark in the transcript, weigh in excess of 25 pounds.

[1] It is common knowledge that one of the results of the nineteenth century beginning of the transformation of our country from a predominantly agricultural to a predominantly industrial society has been the growth like "Topsy" of our great cities. Within the last thirty years we have awakened to the realization that a result of that growth has been the creation of slums and blighted areas therein constituting a serious and growing menace injurious to the public health, safety, morals and welfare of their inhabitants as well as a depreciation in value of

properties within and adjacent to those areas, and a consequent progressive diminution of tax revenues. Prompted by the need to eliminate these conditions as a breeding ground for juvenile delinquency, infant mortality, crime and disease, most, if not all, states have vested their municipalities with power to eradicate those conditions and redevelop those areas. The federal government with its vast, but not unlimited, resources, and the cities with their limited resources, have literally poured money into urban renewal since the end of World War II. Under Title I of the Federal Housing Act of 1949 (Public Law 171, 81st Congress, 42 U.S.C.A. § 1451 et seq.) the federal government has provided financial assistance to state and city governments in the form of loans and grants for the redevelopment of slums and blighted areas. The people of the two great metropolitan areas of this state, Kansas City and St. Louis, have authorized their respective cities to increase their bonded indebtedness and spend the proceeds of those bonds and other city revenues for the clearance and redevelopment of their blighted areas.

[2] It is common knowledge that it would be impossible to clear and redevelop these areas without the power of eminent domain. In this state urban renewal and redevelopment is being accomplished, for the most part, through a program of cooperation between government and private enterprise, the government furnishing its power of eminent domain and private enterprise performing the actual redevelopment. The public policy of this state has been declared in the Land Clearance for Redevelopment Law (Chapter 99, RSMo 1959) to be: "A municipality, to the greatest extent it determines to be feasible in carrying out the provisions of this law, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the rehabilitation or redevel-

opment or renewal of [blighted, etc.] areas *by private enterprise.*" (Emphasis ours.) See § 99.310. The two most common means provided nationwide for the initiation of redevelopment projects by private enterprise are: first, by an authority or commission such as our "Land Clearance for Redevelopment Authority" of the several communities, having municipal powers and attributes, which acquires by condemnation and purchase the lands of an area for which it has developed a redevelopment plan, and then sells or leases the land to private enterprise for redevelopment; and, second, by private redevelopment companies as corporations organized under our "The Urban Redevelopment Corporations Law" which companies themselves (such as West Side) initiate plans for redevelopment and acquire lands in an area to be redeveloped by condemnation and purchase subject to prior approval by and authority from a legislative or administrative agency empowered to approve and grant such authority. An urban redevelopment corporation may, as a redeveloper, also acquire land by purchase or lease from a Land Clearance for Redevelopment Authority. § 353.060.

Such constitutional authority as is needed for full and complete elimination of this cancerous attack upon our municipalities was provided by the 1945 Constitution of Missouri, V.A.M.S. Article VI, § 21, thereof provides: "Laws may be enacted [by the General Assembly], *and any city * * * operating under a constitutional charter may enact ordinances,* providing for the clearance, replanning, reconstruction, redevelopment and rehabilitation of blighted, substandard or insanitary areas, and for recreational and other facilities incidental or appurtenant thereto, and for taking or permitting the taking, by eminent domain, of property for such purposes, and when so taken the fee simple title to the property shall vest in the

owner, who may sell or otherwise dispose of the property subject to such restrictions as may be deemed in the public interest." (Emphasis supplied.) As an incentive or inducement to encourage elimination of blighted areas by private enterprise, Article X, § 7, provides: "For the purpose of encouraging * * * the reconstruction, development and rehabilitation of obsolete, decadent or blighted areas, the general assembly by general law, may provide for such partial relief from taxation of the lands devoted to any such purpose, and of the improvements thereon, by such method or methods, for such period or periods of time, not exceeding twenty-five years in any instance, and upon such terms, conditions, and restrictions as it may prescribe." It was pursuant to the authority of Article VI, § 21, that the General Assembly enacted the "Land Clearance for Redevelopment Authority Law" (§§ 99.300 to 99.660) and pursuant to that section and Article X, § 7, that the General Assembly enacted "The Urban Redevelopment Corporations Law" (Chapter 353) applying to all constitutional charter cities having or thereafter containing a population of 350,000 inhabitants or more. Section 353.110 provides for partial relief from taxation of the real property of such corporations, viz: for the first 10 years it is subject to assessment for general ad valorem taxes solely on the value of the land exclusive of improvements, for the next 15 years such taxes are measured by fifty per cent of the true value including improvements.

Section 353.030(11) restricts and limits the net earnings of an urban redevelopment corporation to 8% per annum of the cost to the corporation of the redevelopment project including the land, and further provides that net earnings from a redevelopment project shall in no event exceed 8% per annum upon the entire cost thereof.

It was also pursuant to the authority of Article VI, § 21, that Kansas City, as a constitutional charter city, adopted "The Urban Redevelopment Ordinance" (Chapter 61, R.O.K.C.). A summary of the provisions of the Redevelopment Ordinance will be helpful to an understanding of its purpose and scheme.

Section 61.240 of the ordinance, in providing for partial tax relief of the property of urban redevelopment corporations, is substantially the same as § 353.110. Sections 61.190 and 61.200 of the ordinance, in restricting and limiting the net earnings of such corporations, are substantially the same as § 353.030(11).

The city council declared and determined in § 61.020 that blighted areas exist within the city; that such areas are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime; that the existence of such conditions results in progressive deterioration and causes a wasteful expenditure of public funds for policing, etc.; that it is impossible and uneconomic for individual owners to independently undertake to remedy such conditions; *that such conditions require the employment of capital on an investment basis,* etc.; that the acquisition of such areas for clearance and redevelopment, and their clearance and redevelopment, under supervision with appropriate planning, are necessary for the public welfare, and are public uses and purposes for which private property may be acquired by purchase or eminent domain; that the necessity for the provisions of the Redevelopment Ordinance is, therefore, declared as a matter of legislative determination to be in the public interest.

Section 61.050 provides for the filing of an application for approval of a redevelopment plan by a redevelopment corporation with the city clerk. This section also pro-

vides that the plan shall not be acted upon by the council until after a public hearing thereon has been held by the city plan commission and a report thereon by the commission to the council. Section 61.070 provides in detail what a redevelopment plan shall contain. Section 61.060 provides for publication of a notice of hearing, a hearing before the city plan commission at which interested parties may be heard, such other investigation as the commission deems necessary, and a report thereafter to the council. Section 61.080 provides for approval of the plan by the commission only upon determination by it that, inter alia, the area is blighted and redevelopment in accordance with the plan is necessary to effectuate the public purposes declared in § 61.020. Section 61.140 provides that the commission shall file its report on the development plan with the city clerk accompanied by an ordinance providing for approval or disapproval of the plan; that the ordinance and the plan shall be referred by the council to a committee for another public hearing thereon. After a hearing, this committee shall file its report with the council and the council may then approve or disapprove the plan. Section 61.150 provides that in any ordinance approving a redevelopment plan the council shall find and declare: (1) that the area proposed to be redeveloped is blighted and that clearance or redevelopment thereof is necessary for the public convenience and necessity; (2) if the redevelopment corporation seeks to acquire property in the blighted area by condemnation, that acquisition by such means is for the public convenience and necessity; and, (3) that approval of the plan and construction of the redevelopment project are necessary for preservation of the health, safety, morals and welfare, etc., of the public. Section 61.140 provides also that if the council adopts an ordinance approving the plan it may authorize the city director of finance to enter into a con-

tract with the redevelpment corporation, such contract to contain the provisions of the plan, the approving ordinance, and a provision that the conditions, provisions and restrictions of the Redevelopment Ordinance be incorporated therein by reference. Section 61.160 provides that the redevelopment corporation may acquire property within the blighted area by eminent domain, "Provided, that such real property shall be devoted to the purposes and used subject to the conditions described in the development plan." Section 61.110 makes it the duty of the city plan commission to investigate and determine from time to time, and make reports to the council at least every six months, whether the redevelopment corporation is complying with the plan and the provisions of the redevelopment ordinance. This section also provides that after completion of the project the redevelopment corporation shall make annual financial reports to the council, through the director of finance, disclosing its earnings, etc. Section 61.250 provides that whenever any redevelopment corporation shall fail substantially to comply with the development plan or the redevelopment ordinance such fact may be certified to the city counselor who is authorized to bring such suit as is necessary to enforce the provisions of the redevelopment plan or to bring an action for damages for any breach thereof.

On August 28, 1963, West Side filed with the city clerk an application for approval of its plan for redevelopment of the so-called Quality Hill area. It is agreed between the parties, and the court found, that this area is a blighted area within the meaning of the Redevelopment Law and Redevelopment Ordinance. This redevelopment plan was the result of consolidation of three separate plans theretofore submitted by three urban redevelopment corporations, the other corporations having been merged into

West Side as the survivor. The plan contemplates, as stated above, the construction of a hotel complex and convention facility after removal of existing buildings from the area. The whole project, to be constructed in three stages, includes a 16-story hotel building, an 8-story hotel building and six 2-story motor-hotel buildings, all providing 812 guest rooms, a 2-story convention center building, a restaurant, and multi-level and surface parking space for 748 automobiles. It is estimated that the total cost of the project will exceed $16,000,000. The first stage construction, which would provide 312 guest rooms, the convention center building, restaurant and parking space for automobiles, is estimated to cost $8,270,000. Of this amount, $2,000,000 is the estimated cost of the land. West Side will acquire the land by purchase, if possible; otherwise, by condemnation. West Side proposes to finance the first stage by a first mortgage loan of $4,270,000, the balance to be provided 50% by Hilton Hotels Corporation (hereinafter sometimes referred to as Hilton) and 50% by Lewis E. Kitchen, Allen J. Block and others (hereinafter sometimes referred to as Kitchen and Associates). The redevelopment plan, as embodied in Sub. Ord. 29352, provides that after acquiring the land West Side will lease it to Hilton and Kitchen and Associates as lessee at a specified rental for a term of not less than 25 nor more than 99 years; that the lessee shall construct and pay for the improvements in accordance with the redevelopment plan and when affixed to the land ownership thereof will vest in West Side; that lessee may enter into a management contract with Hilton for operation of the completed project at a fee not to exceed normal fees usually charged for such services; that the 8% earnings restriction shall apply to both West Side and lessee, any net earnings in excess thereof to be paid to the city. This plan also provides that West Side will, for the first 10 years, pay city, county

and state taxes equal to that now being realized by these authorities. It is estimated that for the 25-year partial tax abatement period the taxes paid by the redeveloper on the first stage construction alone will exceed present tax revenues by over $1,000,000 and if all three stages are constructed the tax revenue after the 25th year will be more than 50 times the present return.

On September 9 and 23, 1963, after publication of notices thereof, public hearings on West Side's application were held by the city plan commission. Counsel for Annbar and Continental attended the hearing on September 9 and urged defeat of the plan upon essentially the same grounds as those advanced in the trial court and in their briefs here. A transcript of the proceedings before the commission and its report thereon, and copies of the redevelopment plan and the proposed ordinance, are attached to the stipulation of facts as exhibits. On September 23, the application was approved by the commission and a report filed with the council. On October 25, Ordinance 29352 (not Sub. Ord. 29352) was introduced on first reading before the council and referred to the finance committee. On October 31, the finance committee held a public hearing on Ordinance 29352 and on November 8 filed its report recommending that the council adopt a substitute for Ordinance 29352. A copy of the transcript of this hearing and the committee's report and recommendations are attached to the stipulation of facts as exhibits. Counsel for Annbar and Continental attended this meeting also and urged defeat of the plan and ordinance for essentially the same reasons given in their appearance before the city plan commission. On recommendation of the committee, provisions were added to the ordinance requiring (1) that the 8% earnings limitation be applicable to both West Side and its lessee, and, (2) that

West Side, its successors and assigns, complete the clearance of blight from the area and construction of the improvements included in the first stage of the project, notwithstanding the possibility of termination of tax relief. On November 15th, the city council adopted Sub. Ord. 29352 by unanimous vote of those present, one councilman being absent. The ordinance contained the above provisions. In this ordinance the council made the necessary findings and determinations required by the several sections of the Redevelopment Ordinance, and directed the Mayor to deliver to West Side a certificate of convenience and necessity authorizing it to use the power of eminent domain to acquire that portion of the property it could not purchase by negotiation. On December 16, the City and West Side entered into the Supplemental Contract authorized by Sub. Ord. 29352. Prior to the execution of this contract, counsel for Annbar and Continental notified the City, West Side, and other interested persons, of its intent to file this suit and sent them copies of the petition it later filed on November 26.

[3] We note that there was testimony which supports a finding, and the trial court found, that West Side has incurred and paid $33,000 in architectural expense in connection with the design of the project, and if it is enjoined or prevented from proceeding with the project it will suffer a loss in excess of $25,000. This testimony was presented by West Side for the announced purpose of showing that the amount in dispute exceeds $15,000, "so that in the event of an appeal the Supreme Court of Missouri will have exclusive appellate jurisdiction." The court has jurisdiction by reason of the constitutional questions involved.

Appellant, Tomlinson, raises two points in her brief. The first is that the Redevelopment Law and the Re-

development Ordinance permit the taking of private property by a private corporation for private use without the consent of the owner. She says that the taking permitted by this law and ordinance violates §§ 2, 10 and 28 of Article I of the Constitution of Missouri and the Fifth and Fourteenth Amendments to the Constitution of the United States.

West Side is without doubt a private corporation, one of its purposes being profit. It is also "organized to serve a public purpose." § 353.030(11). It is authorized by the statutes and ordinances, attacked here, to exercise the power of eminent domain to acquire private property in the area declared to be blighted. After acquisition, the property will be owned and operated by private interests. So it may be said that the "use" to which the property may be put will be private, if the words "private use" are considered in a narrow sense.

In State on Inf. of Dalton, Attorney General v. Land Clearance for Redevelopment Authority of Kansas City, Mo. et al., 364 Mo. 974, 270 S.W.2d 44, the relator challenged the constitutionality of the Land Clearance for Redevelopment Authority Law (§§ 99.300 to 99.660) contending that that law authorized the taking of private property for private use in violation of Article I, §§ 26 and 28 of the Constitution of Missouri and the Fourteenth Amendment to the Constitution of the United States. In that case the Land Clearance Authority, a public body corporate (§ 99.320(1)), was empowered to acquire property in a blighted area by eminent domain, clear it of the blight, and then sell it to private interests for redevelopment. Relator's position was that this constituted a direct flouting of the principle that private property shall not be taken for private use without the consent

of the owner. At the expense of lengthening an opinion we realize is already growing too long we quote at length from the above case because what is said therein on this question clearly explains and supports the reasons for the result we now reach on this point and lays the foundation for determination of questions raised by Annbar and Continental. In holding that the acquisition of property by Authority by eminent domain and its subsequent sale thereof to a private redeveloper constituted a public use as distinguished from a private use, this court, en banc (270 S.W.2d l. c. 49 to 52) said: "Article I, § 26, of the Constitution, forbids the taking of private property for public use without just compensation. Article I, § 28, provides: 'That private property shall not be taken for private use with or without compensation, unless by consent of the owner, [exceptions not here material]; and that when an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be public shall be judicially determined without regard to any legislative declaration that the use is public.' It is also a violation of the Fourteenth Amendment of the Federal Constitution for a state to take property for a private use. Missouri Pacific Railway Co. v. [State of] Nebraska, 164 U.S. 403, 17 S.Ct. 130, 41 L.Ed. 489.

"Within recent years the appellate courts of some fifteen of our sister states and the District of Columbia have upheld one phase or another of slum clearance and redevelopment laws. The appellate courts of two states have held them unconstitutional. Those upholding such laws do so on the ground that blighted and insanitary areas in the state constitute a menace to public health, safety, morals and general welfare, and that the acquisition and redevelopment of such areas constitute the taking of private property

for public use. The constitutions of all states forbid generally the taking of private property for private use without the consent of the owner. The two states denying the constitutionality of such acts, Georgia and Florida, do not deny that the existence of blighted or insanitary areas is a menace to the general welfare, but they disapprove of the constitutionality of the laws enacted in their states on the ground that the redevelopment of such areas as contemplated by the acts under consideration constitutes a private as distinguished from public use.

"The provisions of Article I, §§ 26 and 28, were carried forward from our Constitution of 1875 into our new Constitution of 1945, in which latter document is incorporated a new section which must be read and construed in connection with the aforesaid provisions. No similar provision is found in the constitution of either of the states that have disapproved slum clearance laws. The new provision is Article VI, § 21, as follows: * * * [For brevity we omit quotation from Constitution; it can be found on page 640.]

"As early as 1923, in the case of In re Kansas City Ordinance No. 39946, (Kansas City v. Liebi), 298 Mo. 569, 252 S.W. 404, 407, 28 A.L.R. 295, this court stated: 'Two different theories are presented by the judicial attempts to describe the subjects to which the expression [public use] would apply. One theory of "public use" limits the application to "employment"—"occupation." A more liberal and more flexible meaning makes it synonymous with "public advantage"—"public benefit."' And at page 409 of 252 S.W., the opinion further states: 'An examination of cases in this state will show this court is inclined to a more liberal application of the term "public use."'

"In 1939, the State Municipal Housing Authorities Law, Sections 99.010-99.230, RSMo 1949, V.A.M.S., very kindred

in its purpose and effect to the Act here under consideration, came before this court in the case of Laret Investment Co. v. Dickmann, 345 Mo. 449, 134 S.W.2d 65. It was there held that the Housing Authority, organized under the Act for the purpose of clearing slums and erecting and maintaining low-cost housing, was a municipal corporation with governmental functions for public purposes, and that the remedial purposes of the Act would be presumed to be 'public purposes' unless it clearly appeared they were not in harmony with the provisions of the Constitution; and further held that the concept of 'public use' was never to be taken as static, but should be applied and construed as made necessary to the public welfare by changing conditions. To the same effect are the cases of Bader Realty & Investment Co. v. St. Louis Housing Authority, 358 Mo. 747, 217 S.W.2d 489; St. Louis Housing Authority v. City of St. Louis, 361 Mo. 1170, 239 S.W.2d 289.

"Relator contends that the Housing Law and housing cases are distinguishable from the Land Clearance for Redevelopment Law and the instant case, in that the areas authorized to be taken by eminent domain under the Housing Law and the cases decided thereunder are to be used by the Authority for the construction of modern, sanitary and low-cost housing; whereas, in the instant case the property proposed to be taken and cleared of its blighted and insanitary condition is ultimately to be sold to private interests. Relator's position is that this amounts to a direct flouting of the principle that private property cannot be taken for private use without the consent of the owner; and that even though Section 99.310 of the Law declares that the acquisition of real estate in blighted and insanitary areas for purposes of redevelopment, such as is contemplated by the plan here under consideration, is a public use, yet, under Article I, § 28, of the Constitution, V.A.M.S.,

the question whether a use is public can be determined only by the judiciary.

"Relator further says that Article VI, § 21, 'is silent as to whether the end-use of land so taken must be a public use', and that since 'Article I, § 28, sets forth specific exceptions, such as ways of necessity and sanitary ditches, and allows the taking of private property for private use in these exceptional situations, it can be fairly inferred that the framers of the Constitution inferred that all other exercise of the power of eminent domain be for a public use, and that Article VI, § 21, should not be read as an exception to Article I, § 28.' * * *

"The very fact that Article VI, § 21, is silent as to the use to which the land may be put after it is cleared of its blighted and insanitary condition and sold, *'subject to such restrictions as may be deemed in the public interest'* (emphasis ours), conveys, we think, the definite assumption that the primary object and public purpose of the law shall be the clearance and correction of any duly declared blighted and insanitary condition, and that thereafter the area may be sold with or without restrictions to a private enterprise, as may be deemed by Authority to be in the public interest.

"A vexing question is whether Article VI, § 21, constitutes an exception to Article I, § 28, which declares that the question whether the contemplated use of property sought to be taken by the processes of eminent domain shall be judicially determined without regard to any legislative declaration that the use is public. On the other hand, Article VI, § 21, in express terms, unqualifiedly authorizes the legislature and cities and counties operating under constitutional charters to enact legislation providing for the taking of blighted and insanitary areas by eminent domain.

"In discussing an analogous situation, the Court of Appeals of New York, in the case of Kaskel v. Impellitteri, 306 N.Y. 73, 115 N.E.2d 659, 662, said: 'However, the situation here actually displayed is one of those as to which the Legislature has authorized the city officials, including elected officials, to make a determination, and so the making thereof is simply an act of government, that is, an exercise of governmental power, legislative in fundamental character, which, whether wise or unwise, cannot be overhauled by the courts. If there were to be a trial here and the courts below should decide in favor of plaintiff, there would be effected a transfer of power from the appropriate public officials to the courts. The question is simply not a justiciable one.' In the case of Schenck v. City of Pittsburgh, 364 Pa. 31, 70 A.2d 612, the Supreme Court of Pennsylvania held, as concisely stated in the syllabus: 'In absence of any indication that city planning commission did not act in good faith or was wholly arbitrary in certifying the area designated by it as blighted within meaning of Urban Redevelopment Law, its certification to that effect was not subject to judicial review.'

"In determining the question thus posed, we think we must, if possible, give effect to both Article I, § 28, and Article VI, § 21. And we must take into consideration the Fourteenth Amendment to the Constitution of the United States. In the case of City of Cincinnati v. Vester, 281 U.S. 439, 446, 50 S.Ct. 360, 362, 74 L.Ed. 950, the court said that 'in considering the application of the Fourteenth Amendment [to the Constitution of the United States] to cases of expropriation of private property, the question what is a public use is a judicial one.' The opinion in that case further states, however, that: 'In deciding such a question, the Court has appropriate regard to the diversity of local conditions and considers with great respect legislative

declarations and in particular the judgments of state courts as to the uses considered to be public in the light of local exigencies.'

"Prior to the adoption of our new Constitution, in which for the first time appeared the broad powers granted the legislative branch as set forth in Article VI, § 21, we had held in the Laret case, supra, that a finding and declaration as to the need of public housing would be entitled to great weight, and that the courts would presume the declared purposes 'public purposes' unless it clearly appeared they were not in harmony with the constitution. (It was held they were in harmony.) * * *

"We hold that Article I, § 28, and Article VI, § 21, considered together and in the light of the above cited cases, mean that final determination of the question whether the contemplated use of any property sought to be taken under the Law here in question is public rests upon the courts, but that a legislative finding under said law that a blighted or insanitary area exists and that the legislative agency proposes to take the property therein under the processes of eminent domain for the purpose of clearance and improvement and subsequent sale upon such terms and restrictions as it may deem in the public interest will be accepted by the courts as conclusive evidence that the contemplated use thereof is public, unless it further appears upon allegation and clear proof that the legislative finding was arbitrary or was induced by fraud, collusion or bad faith. * * *"

The court also observed, 270 S.W.2d at l.c. 53, that the statutes attacked and the undertakings of Authority and Kansas City clearly demonstrated "* * * that the purpose in acquiring the land is to rid it of its blighted and insanitary condition and to thereafter convey it to rede-

velopers for conversion to useful purposes in accordance with the redevelopment plan"; that in the cases from other jurisdictions cited therein[3] "it is pointed out that the primary purpose of a redevelopment project is a public purpose, and that *any benefits to private individuals are merely incidental to the public purpose.*" (Emphasis supplied.) The court also observed in ruling another charge leveled at the constitutionality of the Land Clearance Authority Law, at l. c. 57, that the purpose of the provision in Article VI, § 21, permitting the sale of property acquired by Authority "* * * is that the taker shall become invested with the fee simple title in order to enable it to 'sell or otherwise dispose of the property subject to such restrictions as may be deemed in the public interest'" and, "* * * if the Authority deems it in the public interest, such property may be sold without restriction."

It is interesting to note that in another case, in which the opinion was handed down during the same month by this court, en banc, one contention was that a section of the Urban Redevelopment Corporations Law (§ 353.110) was unconstitutional as granting a tax exemption to private interests because the land acquired by Authority would be sold to a private urban redevelopment corporation, such as West Side. Land Clearance for Redevelopment Authority of City of St. Louis v. City of St. Louis et al., Mo.Sup.,

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3. Rowe v. Housing Authority of City of Little Rock, 220 Ark. 698, 249 S.W.2d 551; Redevelopment Agency of City and County of San Francisco v. Hayes, 122 Cal.App.2d 777, 266 P.2d 105; Ajootian v. Providence Redevelopment Agency, 80 R.I. 73, 91 A.2d 21; Gohld Realty Co. v. City of Hartford, 141 Conn. 135, 104 A.2d 365; Foeller v. Housing Authority of Portland, 198 Or. 205, 256 P.2d 752. For other cases in other jurisdictions reaching the same result, see: Velishka v. City of Nashua, 99 N.H. 161, 106 A.2d 571, and cases summarized in 44 A.L.R.2d at pages 1421 to 1426.

270 S.W.2d 58, 64 [9, 10, 11]. A taxpayer, an owner of property within the area to be acquired for redevelopment, was permitted to intervene as a party. A specific contention of intervenor was that Article X, § 7, authorized partial tax relief only when the purpose of urban redevelopment was a public one, and that the sale to and use by a private corporation was not a public purpose. The court held that the purpose was a public one and that the provisions of § 353.110 are expressly authorized by Article X, § 7, and do not conflict with Article X, § 6.

[4, 5] Tomlinson contends that an important distinction between the Kansas City and St. Louis Land Clearance Authority cases and the instant case is that in those cases there was to be a taking of private property by a public body, the Land Clearance Authority; whereas, here the taking is to be by a private corporation. If authority exists to empower a public body to acquire private property by eminent domain and sell it to private enterprise for redevelopment, then such authority exists to empower a private corporation to acquire property by such means for a public purpose. Article VI, § 21, empowering legislative bodies to enact laws and ordinances to provide for the acquisition of private property by eminent domain for the purposes therein stated, does not designate the entities and, of course, makes no distinction between entities, such legislative bodies may invest with that power. Under the Land Clearance Authority Law private enterprise is only one step removed from ownership, the Authority being the condemnor. Under the Redevelopment Law and Redevelopment Ordinance that step is removed, and private enterprise takes the initial step as the condemnor. We cannot, and should not, second guess the legislative branch of government as to what bodies may be invested with the power of eminent domain. The granting of that power to private

enterprise is not an inherent prohibition of the constitution. We see no difference between the power granted redevelopment corporations and that granted railroads and others to carry on a business necessary to serve the public. The words of the Supreme Court of the United States in ruling the constitutionality of the District of Columbia Redevelopment Act of 1945 are appropriate. That court said: "Once the object [clearance and redevelopment of slums or blighted areas] is within the authority of Congress, the right to realize it through the exercise of eminent domain is clear. For the power of eminent domain is merely the means to the end. * * * Once the object is within the authority of Congress, the means by which it will be attained is also for Congress to determine. Here one of the means chosen is the use of private enterprise for redevelopment of the area. Appellants argue that this makes the project a taking from one businessman for the benefit of another businessman. But the means of executing the project are for Congress and Congress alone to determine, once the public purpose has been established. * * * The public end may be as well or better served through an agency of private enterprise than through a department of government—or so the Congress might conclude. We cannot say that public ownership is the sole method of promoting the public purposes of community redevelopment projects." Berman et al. v. Parker et al., 348 U.S. 26, l. c. 33, 34, 75 S.Ct. 98, 103, 99 L.Ed. 27. We cannot say that public bodies are the only entities that may be invested with the power of eminent domain—the authority to designate those entities with whom it may invest that power is solely that of the legislative branch.

For cases from other jurisdictions supporting the views above expressed, wherein private redevelopment corporations sought to acquire property by eminent domain, see:

Zurn v. City of Chicago, 389 Ill. 114, 59 N.E.2d 18; Zisook v. Maryland-Drexel Neighborhood Redevelopment Corporation, 3 Ill.2d 570, 121 N.E.2d 804; Amalgamated Housing Corporation v. Kelly, 193 Misc. 901, 82 N.Y.S.2d 577.

[6] We hold that the Redevelopment Law and Redevelopment Ordinance do not violate the constitutional provisions cited by Tomlinson.

[7] The second point in Tomlinson's brief is that the Redevelopment Law and Redevelopment Ordinance preclude participation in the redevelopment project by owners divested of property in the project area. The point is not clear. The point is not raised as an issue in her pleadings or in her motion for new trial. In her argument she says that it is inherently wrong to exclude "participation of present property owners in the project and vesting exclusive control in the redeveloper to the detriment of the rights of the public." We have held that a public use is synonymous with public benefit; this use could not be a detriment to rights of the public. In re Kansas City Ordinance No. 39946 (Kansas City v. Liebi), 298 Mo. 569, 252 S.W. 404, 407. We have read the dissenting opinions she refers to in Rabinoff v. District Court etc., 145 Colo. 225, 360 P.2d 114, but we agree only with the majority opinion which, we add, is in harmony with previous holdings of this court and the weight of authority.

Annbar and Continental, in their joint brief, rely on twelve points, several having sub-points. The first four points are closely related. They are that the court erred in finding:

1. "The Redevelopment Law and the Redevelopment Ordinance to be in compliance with Article I, section 28 and Article VI, section 21 of the Missouri Constitution, because said enabling laws permit the sale of property acquired by

privately owned corporations by eminent domain, for unlimited private use without restrictions deemed in the public interest."

2. "That the Redevelopment Law, the Redevelopment Ordinance and Sub. Ord. 29352, were enacted pursuant to and in compliance with Article VI, section 21, of the Missouri Constitution and the 5th Amendment to the Constitution of the U. S. because said constitutional authority permits sale or disposition of redevelopment property only subject to restrictions deemed in the public interest, whereas said laws and ordinances permit sale, disposition or use of such property free from any restrictions without any determination or procedure for determination of restrictions deemed in the public interest."

3. "That Sub. Ord. 29352 does not permit evasion of the restrictions required by said Redevelopment Law and said Redevelopment Ordinance", because the 8% earnings limitation is evaded by splitting the redevelopment benefits and duties between three entities with overlapping ownership interests, i.e. West Side, the lessees, and Hilton Hotels Corporation as the managing operator.

4. "That the granting of the power of eminent domain and tax relief to West Side and others pursuant to provisions of the Redevelopment Law and Redevelopment Ordinance does not violate Article I, section 28 and Article I, section 2 of the Missouri Constitution, and the due process and equal protection clauses of the 14th Amendment to the Constitution of the United States, because there is no assurance under said laws that a public benefit will be accomplished as discussed in points I, II and III hereof."

The underlying theory of these four points is that the Redevelopment Law, Redevelopment Ordinance and Sub. Ord. 29352 do not require that a public purpose be served.

What is the public purpose that Article VI, § 21, requires be served? That section provides that private property may be taken to serve these purposes: "* * * the clearance * * * and rehabilitation of blighted * * * areas * * *." Section 61.020 of the Redevelopment Ordinance declares as a matter of legislative determination that the purposes to be served by Chapter 61 are the clearance, etc., and redevelopment of blighted areas, and that such purposes are public purposes. In the Kansas City Land Clearance case (270 S.W.2d 44) we said at l. c. 51: "* * * the primary object and public purpose of the law shall be the clearance and correction of any duly declared blighted * * * condition * *."

What restrictions are required by Article VI, § 21, to be imposed when property taken is sold? And who may impose such restrictions? That section provides that property acquired by eminent domain for the above purposes may be sold "subject to *such restrictions as may be deemed in the public interest.*" (Emphasis supplied.) The mandate of the constitution is not that restrictions be imposed; the mandate is that either of the legislative bodies mentioned impose *such* restrictions as that body *may* deem in the public interest. That is: the legislative branch may deem it in the public interest that the property be sold subject to no restrictions. In the Kansas City Land Clearance case, supra, we also said at l. c. 51, that after the public purpose is served "* * * the area may be sold with or without restrictions to a private enterprise, as may be deemed by Authority to be in the public interest", and at l. c. 57 that "* * * if the Authority deems it in the public interest, such property may be sold without restriction." In that case the body empowered to determine whether the public interest required that restrictions be imposed and, if so, what restrictions, was the Authority, as a public

body, corporate and politic; in this case the body empowered to make that determination is the city through its legislative body, the city council.

Annbar and Continental contend specifically that § 353.150, subd. 4 of the Redevelopment Law and § 61.230 (c) of the Redevelopment Ordinance are in violation of the several provisions of the state and federal constitutions, because those sections permit the sale of property acquired by eminent domain without assurance that a public purpose or benefit will be served.

In the first place, the design and purpose of the Redevelopment Law is to authorize the organization of a special corporation, an Urban Redevelopment Corporation, with limited and restricted purposes and powers. In essence, this special corporation is only a redeveloper, with power to redevelop only those areas declared blighted by a constitutional charter city. The Redevelopment Law is not the sole authority under which the city adopted the Redevelopment Ordinance; other authority is granted by Article VI, § 21 which is self-enforcing and does not require enabling legislation by the General Assembly. It is pertinent here only in the field where the Redevelopment Ordinance provides for partial tax relief and limitations and restrictions on dividends and earnings of the redevelopment corporation that enabling legislation such as the Redevelopment Law was necessary. It is true that the Redevelopment Law authorizes a redevelopment corporation to acquire real property, but its right to exercise the power of eminent domain is "* * * under such conditions and only when so empowered by the legislative authority of the cities affected by this chapter." § 353.110, subd. 2.

Sections 353.150, subd. 4 and 61.230(c) do permit sale of real property acquired by the redevelopment corpora-

tion for a redevelopment project. But we must consider the whole of the Redevelopment Ordinance in determining whether safeguards or restrictions have been provided to assure that a public purpose will be served. In that connection we may consider the provisions of Sub. Ord. 29352. In sub-point A of their first point, appellants contend that Sub. Ord. 29352 may not supply the restrictions they say are necessary in the enabling laws to meet constitutional requirements. We do not disagree with the cases they cite on this proposition; they merely are not applicable here. It is apparent that in considering the type of legislation necessary to effect the purpose of Article VI, § 21, in a city the size of Kansas City where several redevelopment projects of varying sizes in different locations under varying conditions and having different utility purposes are contemplated, the city council, as the legislative body of the city, would adopt in the first instance an ordinance in general language establishing the policy and fixing general standards that would fit the overall purpose. It would, and did, leave to subsequent ordinances the expression of the details and specific provisions, conditions and restrictions necessary to apply the policy and standards to a particular redevelopment project. The design of the Redevelopment Ordinance contemplates that supplemental action by ordinance would be necessary for each project to effect the overall purpose. For these reasons we may, and should consider the provisions of Sub. Ord. 29352.

On pages 640 to 641, inclusive, of this opinion we related in detail the several sections of the Redevelopment Ordinance which impose the general conditions, restrictions and controls adopted by the city to assure accomplishment of the public purpose. It is doubtful whether the city could have prescribed more specific or definite restrictions in advance of each project.

[8] We hold that the challenged sections of the Redevelopment Law and Redevelopment Ordinance are not contrary to or in violation of the constitutional provisions referred to by appellants.

[9] Sub. Ord. 29352 contains as an integral part thereof, all provisions of the redevelopment plan for this project and all provisions of the supplemental contract later executed by the city and West Side. This ordinance requires that the 8% earnings restriction be applicable to both West Side and its lessee. It also requires that West Side, its successors and assigns, complete clearance of blight from the area and construction of the improvements. The city council has thus, by legislative determination, adopted this *means* of restricting the earnings of West Side and its lessee, and assuring accomplishment of the primary object and public purpose of the law. The means and method of restriction and assurance of accomplishment of the public purpose is for determination by the authorized legislative body, and that determination, whether wise or unwise, cannot be affected by the courts unless it appears upon allegation and clear proof that the legislative determination was arbitrary or was induced by fraud, collusion or bad faith. State on Inf. of Dalton, Attorney General v. Land Clearance for Redevelopment Authority of Kansas City, Mo., et al., supra, 270 S.W.2d l. c. 51, 52 [2]; Schenck v. City of Pittsburgh, 364 Pa. 31, 70 A.2d 612, 615; Redevelopment Agency of City and County of San Francisco v. Hayes, 122 Cal.App.2d 777, 266 P.2d 105.

What we have said above as to the effect and finality of a legislative determination of the means or method adopted to assure accomplishment of the public purpose applies to the next, as well as some of the subsequent, contentions of Annbar and Continental. These appellants contend that Sub. Ord. 29352 permits evasion of the 8%

earnings restriction by splitting the redevelopment duties and benefits between three entities—West Side, its lessee, and Hilton as management operator—only two of which (West Side and its lessee) will be limited to 8% of net earnings. One fallacy in this contention is that net earnings are computed by deducting from gross earnings the cost and expense of operation of the project, and such pay as Hilton would receive in its capacity as operator would be a deductible expense of operation. §§ 353.030 (11) and 61.190(b). Sub. Ord. 29352 does not permit evasion of the earnings restriction but on the contrary endeavors to assure, and we think assures as far as possible, that the restriction will not be evaded by providing that the management operator shall not be paid in excess of the normal fee charged in the hotel industry.

Points V and VI of the brief of Annbar and Continental are closely related and may be treated together. They are:

1. That Sub. Ord. 29352 and the Supplemental Contract are contrary to public policy and void because: (A) this ordinance authorizes a conflict of interest between the owners of (1) West Side, (2) lessee, and, (3) the management operator; and (B) West Side, as a corporation formed for a public purpose, has a fiduciary duty to the city and public with regard to contracts pertaining to the redevelopment project.

2. That the actions of the city council were induced by fraud or misfeasance because the evidence showed that conflicting ownership interests in West Side, the lessee and the management operator were not revealed to the city.

The owners or shareholders of West Side are Kenneth M. Myers and Earl E. Russell; the owners of lessee are

Hilton and Kitchen and Associates; the management operator is to be Hilton, but the record does not show who its owners are. There is no showing that West Side or Kitchen and Associates own any interest in Hilton. The record shows that the ownership interests in West Side and lessee were disclosed to the city, and that Hilton would be the management operator. This ordinance and the Supplemental Contract prohibit common ownership of West Side and lessee, but do not prohibit common ownership of lessee and the management operator. Lewis Kitchen formerly owned a majority interest in West Side, and these appellants state that Myers, the present owner of a 50% interest in West Side, now has for clients both Kitchen and Hilton. The record does not support that statement, although there is an indication in the record that he did represent Kitchen when Kitchen was a part owner of West Side.

Annbar and Continental argue that Myers, as an owner of West Side, should not be permitted to make a lease with his clients, Kitchen and Hilton; that Kitchen and Hilton, as part owners of lessee, should not be permitted to make a management contract with Hilton; that West Side should not be permitted to make and enforce a contract with the city providing for such lessee and management company; that people in these positions are exposed to tendencies to corrupt; and, that they will not deal at arm's length in the public interest.

The possibility that between West Side and lessee there could be a conflict of interest adversely affecting the public purpose of this project was removed, as far as possible, when the city took the precaution of providing by ordinance that there could not be common ownership of these two. The public purpose of this project is accomplished when the blight is cleared and the area redeveloped,

and it is to West Side and through it to lessee that the city looks for accomplishment of that purpose. The legislative body of the city has determined that it has imposed adequate conditions and restrictions on these two to assure that what was potentially a conflict of interest having possibilities of an adverse effect would not exist. We cannot, and should not, say that what the council has determined to be adequate assurance that an adverse conflict of interest will not exist, does in fact authorize a conflict of interest contrary to public policy. We fail to see wherein a conflict of interest exists between these two. We decline to speculate, as these appellants would have us do, that West Side might assign its contract with the city to another in which the owners of lessee would have an interest. Should that happen it can be met at the appropriate time by those public authorities charged with the responsibility of enforcing the redevelopment plan and ordinance. As to Hilton, in its capacity as management operator, it does not come into the picture until after the public purpose has been accomplished. And at that point it enters the picture only as the agent, servant or employee of the lessee. The only possible conflict suggested is that at that point these three might, or would have the temptation to, somehow evade the 8% earnings restriction. However, first, the limitation on net earnings is applied to the conbined cost of both West Side and lessee, so that, as between these two, there cannot be an evasion of the earnings restriction; second, that which is paid to the management operator is an expense of operation, authorized by both the statute and ordinance, as deductible from gross earnings. By Sub. Ord. 29352 and the Supplemental Contract management fees and charges are limited to those normally charged in the hotel industry for those services. The "normal" charge can be determined with some cer-

tainty. West Side is required to file annual financial reports with the city. Through that information the city can determine whether the redevelopment plan and contract are being breached by an evasion of the earnings restriction through a charge of excess management fees, and take such action as is deemed necessary.

[10] As stated, West Side is a private corporation; yet, it was organized to serve a public purpose. It does have a duty to the city and public with regard to contracts pertaining to the redevelopment project. But it has not been demonstrated wherein it has breached that duty or wherein the definite possibility lies that it will do so.

The cases cited by these appelllants in support of their points V and VI are not applicable to the facts of this case. Those from which they quote are: Pacific R. Co. v. Seely, 45 Mo. 212; Witmer v. Nichols, 320 Mo. 665, 8 S.W.2d 63.

Annbar and Continental, in point VII of their brief, contend that Sub. Ord. 29352, grants a tax exemption in violation of Article X, § 6 and Article I, § 2, of the Constitution of Missouri and the equal protection clause of the Fourteenth Amendment to the Constitution of the United States in that the ordinance grants tax relief to: (1) a purchaser from West Side, and (2) the lessee. Specifically, they say that under the Redevelopment Law and Redevelopment Ordinance the only person who can be granted partial tax relief is an urban redevelopment corporation, but that this ordinance grants tax relief to *any* purchaser from West Side. They also say that in automatically granting tax relief to *any* purchaser, this ordinance attempts to bind a future council and relieve it of its discretion to refuse tax relief to a purchaser from West Side. The ordinance *does* provide that the tax relief granted real property of

West Side under the Redevelopment Law and Ordinance shall inure to a purchaser, meaning *any* purchaser. But, that is not to say that the granting of such relief is in violation of the constitutional provisions referred to. Appellants contend that § 353.110 limits tax relief solely to urban redevelopment corporations. However, on this point, they ignore § 353.150, subd. 4. Section 353.110 provides for partial relief from taxation of the real property of an urban redevelopment corporation "so long as [it] is owned by an urban redevelopment corporation and used in accordance with an authorized development plan * * *." The Redevelopment Law, in § 353.150, subd. 4, recognizes and contemplates that property of a redevelopment corporation may be sold, and that the purchaser may be one other than a redevelopment corporation. That section authorizes partial tax relief on the land acquired by such purchaser under certain circumstances; it provides that if "* * * the purchaser of such real property of such redevelopment corporation shall continue to use, operate and maintain such real property in accordance with the provisions of any development plan, the legislative authority of any city affected by the provisions of this chapter may grant the partial tax relief provided in section 353.110; * * *.". By § 353.150, subd. 4 the legislature has provided that partial tax relief may inure to a person other than an urban redevelopment corporation, and the public purpose of the law is encouraged by further providing that this relief may continue only so long as the property is used in accordance with the development plan. Article X, § 7, of the constitution expressly authorizes the general assembly to provide for partial relief from taxation of lands devoted to the purpose of rehabilitation of blighted areas by such method and upon such terms and conditions as it may prescribe. That section provides partial tax

relief for the lands as distinguished from relief to a particular owner of the land; it does not prescribe the class of persons owning the land to whom the relief may inure. That section empowers the general assembly to prescribe the method, terms and conditions under which that relief may be enjoyed, which includes the power to provide that partial tax relief shall inure to the benefit of a private urban redevelopment corporation *and* any purchaser from it, so long as that purchaser continues to use the land for what has been determined to be a public purpose. In Land Clearance for Redevelopment Authority of City of St. Louis v. City of St. Louis, supra, 270 S.W.2d l. c. 64-65, the constitutionality of § 353.110 was challenged as granting a tax exemption to a private urban redevelopment corporation. We held that the provisions of § 353.110 were expressly authorized by Article X, § 7, and did not conflict with Article X, § 6.

[11-13] We now hold that the provisions of Sub. Ord. 29352 are in accordance with § 353.150, subd. 4; that the latter section is authorized by Article X, § 7; and that neither § 353.150, subd. 4 nor Sub. Ord. 29352 conflict with Article X, § 6, or the equal protection clause of either constitution.

[14] Appellants complain that Sub. Ord. 29352, in automatically granting tax relief to a purchaser, attempts to bind a future city council and deprive it of its discretion to refuse tax relief to a purchaser from West Side. As stated, the ordinance does extend partial tax relief on the land to a purchaser, but that relief is extended only so long as the land is used in accordance with the development plan and the whole period of tax exemption may not exceed 25 years. If it is not used for this purpose by the purchaser, then it shall be assessed for ad valorem taxes on its full true value. The language of § 353.150, subd. 4 is

such that we deem it to be the intent of the legislature to empower the city council to determine at the time a redevelopment plan is approved whether or not tax relief, limited as above indicated, would be extended to a purchaser. A contrary construction would be inconsistent with reason. A contrary construction could possibly make mortgage financing impossible and render impotent the Redevelopment Law. If a future city council is tethered by the Redevelopment Law and this ordinance as to a purchaser, it is tethered for a period no longer than it would be as to a redevelopment corporation. The general assembly has determined that the partial tax exemption period shall extend for not to exceed 25 years and that this is in the public interest and serves a public purpose. Determination of the period of time during which tax relief is extended for these purposes is left by Article X, § 7, to the general assembly. We may not determine that the term prescribed by the general assembly is unreasonable, nor may a future city council. However, a future city council is not completely tethered by the ordinance; if it determines that the land is not being used by the purchaser in accordance with the development plan the land shall be assessed at its full true value. City of St. Louis v. Cavanaugh, 357 Mo. 204, 207 S.W.2d 449, cited by these appellants, is distinguishable from this case.

[15] Appellants also complain that Sub. Ord. 29352 in effect grants tax relief to the lessee, an entity not a redevelopment corporation. The lessee will construct the improvements and will be entitled to their use as lessee for a period of at least 25 years, but the legal title to the improvements immediately vests in West Side. The partial tax relief afforded the real property and the improvements inures to the direct benefit of the owner and, of course, indirectly or incidentally, inures to the lessee who has con-

tributed to the accomplishment of the public purpose and bound itself to the 8% earnings restriction. We held above that the fact that partial tax relief may inure to the benefit of a purchaser from West Side does not violate the constitutional provisions referred to; for the same reasons, we hold that such indirect or incidental relief as may inure to lessee does not violate those provisions. Moreover, by the time such relief may be incidentally afforded lessee the public purpose, i. e., the clearance and redevelopment of the blighted area, will have been accomplished.

In point VIII of their brief, Annbar and Continental contend that the Redevelopment Law and Redevelopment Ordinance are not clear and are ambiguous when applied to Sub. Ord. 29352 because the law and ordinance contemplate one redevelopment corporation bound by that law and ordinance and a development plan; that the Redevelopment Law and Ordinance are vague and unintelligible when applied to the three-headed association (West Side, lessee, and management operator) permitted by Sub. Ord. 29352. Closely allied to this point is their point XI that the court erred in denying discovery and refusing evidence on the meaning of the Redevelopment Law, Redevelopment Ordinance and Sub. Ord. 29352.

[16] These appellants argue that when the Redevelopment Law and Ordinance are applied to this three-headed association it is impossible to determine: (1) whose cost will be the basis for fixing the 8% earnings restriction, (2) what is the cost basis of each of these entities, (3) which contributors to cost are restricted in earnings, (4) how or to whom the amortization deduction shall be applied, (5) what effect will be had on the earnings restriction in the event of enlargement of the project by one of the three entities, and, (6) what disposition will be made of surplus earnings in event of sale of the project. The matters they

say are impossible of determination and demonstrate the vagueness and ambiguity of the Redevelopment Law and Ordinance when that law and ordinance are applied to the owner, the owner's tenant, and that tenant's servant, are treated in their argument as sub-points, and posed as that many questions, with some of those sub-points containing from two to nine additional questions, some of which contain more than one part. Those questions having substance are determined in other parts of this opinion. We see no need to further lengthen this opinion by discussing separately each question and hypothetical situation for in examining them we have reached the same end result so far as the basic point made is concerned. It is sufficient to say that we have closely examined the Redevelopment Law and Ordinance in the light of those questions and find and hold, as did the trial court, that that law and ordinance are not vague and ambiguous when applied to Sub. Ord. 29352 and the persons mentioned therein.

[17, 18] Contending that this law and ordinance are vague and ambiguous, Annbar and Continental, by interrogatories and depositions, sought evidence from West Side, Hilton, and Kitchen and Associates, their representatives and attorneys, (all interested parties, except the City) on the construction they gave the statutes, ordinances and contract. The trial court held that the Redevelopment Law and Ordinance are not vague and ambiguous and that the extrinsic evidence sought and offered in aid of construction is irrelevant. We held above that this law and ordinance are not ambiguous, and now hold that the trial court did not err in denying discovery and excluding evidence on the meaning thereof. As stated by appellants, "It is elementary that extrinsic evidence is not admissible in the absence of ambiguity." It is so elementary that it does not require the citation of authority.

Annbar and Continental contend in their point IX that the redevelopment plan does not contain a detailed statement of the proposed method of financing the project as required by § 61.070(n); that for this reason the court erred in finding that Sub. Ord. 29352 complied with the provisions of the Redevelopment Ordinance. In essence, this contention is that the statement of the proposed method of financing contained in the redevelopment plan is not in sufficient detail.

[19] We need not set out the method of financing. It is sufficient to say that we will not substitute our judgment for that of the city as to how "detailed" West Side's statement of financing is required to be. The city plan commission and the finance committee of the council, after public hearings, have approved the redevelopment plan as containing a statement of the method of financing in sufficient detail; and, there has been a legislative determination by the city council that the method and plan are sufficient. Absent allegations of fact and clear proof that approval of the plan was arbitrary or the result of fraud, collusion or bad faith, it will be accepted by the courts as sufficient; there is no allegation or proof that its approval was arbitrary or the result of fraud, etc. State on Inf. of Dalton v. Land Clearance for Redevelopment Authority of Kansas City, supra, 270 S.W.2d l. c. 52 [2]; Reis v. Metropolitan St. Louis Sewer District, Mo., 373 S.W.2d 22, 27, 28 [8, 9]; 62 C.J.S. Municipal Corporations § 199, pp. 373-374.

Arguing that a more detailed statement of the method of financing was necessary so that the City might exercise reasonable judgment in approving or disapproving the plan, appellants state that one element that should have been considered is whether West Side is financially responsible and able to perform the redevelopment contract or, in the event of breach, to respond in damages; that another ele-

ment that should have been considered is the legal liability of the other proposed investors to perform as represented by West Side. By a motion to produce directed to West Side and interrogatories propounded to West Side, Kitchen, Block, Myers, and a representative of Hilton, appellants sought information and items they say were relevant to these elements the city should have considered. The court sustained objections to many of these interrogatories and denied production of certain items, apparently for the reason that they were not relevant to the issues. In point X of their brief, appellants contend that the court erred in denying discovery of these matters.

[20] As stated above, the power and obligation to make a determination as to whether the method of financing is in sufficient detail and whether the parties proposing the plan are financially and otherwise responsible is first vested in the legislative body of the city which made that determination before this suit was filed. We cannot say the council did not consider the financial responsibility of the redeveloper, and others, in making its determination, or that it did not advise with counsel and consider the legal liability of the other investors. There is no need to set out the interrogatories to which objections were sustained or items requested which were denied. The information sought by discovery procedures was not relevant to the issues. The trial court ruled correctly. The point is denied.

As stated in the first part of this opinion, appellant, Tomlinson, was permitted by the trial court to intervene as a party plaintiff over the objection of Annbar and Continental. After Tomlinson was permitted to intervene, Annbar and Continental filed a motion to dismiss her petition. The grounds for dismissal were that the intervention was the result of wrongful collusion and cooperation between Tomlinson and West Side on a pretense of controversy be-

tween those parties; that there was in fact no controversy; that the purpose of intervention was to hinder Annbar and Continental in the prosecution of their action, compromise their position and wrongfully wrest control thereof from them, and aid West Side in its defense. Suggestions in support of their motion stated (1) that Tomlinson's intervention was without any prior consultation or discussion with these plaintiffs or their attorneys, (2) that in cooperating with West Side, Tomlinson had, within a week after answers had been filed to her petition, insisted before the assignment division that the court assign and set the case for an early trial, and (3) that they believed, and would prove by deposition, that West Side (a) solicited the intervention of Tomlinson, (b) conferred with Tomlinson and her attorneys and procured their cooperation to the detriment of Annbar and Continental and to the pretended cause of intervenor, and, (c) did extensive research for and prepared or assisted in preparation of her pleadings. By motions to produce certain records and papers and by interrogatories addressed to Tomlinson and West Side, and later by depositions, these plaintiffs sought evidence to prove the allegations of their motion to dismiss. On June 26, 1964, at a hearing on the motions to produce and objections to interrogatories, the court observed that much of the information requested (such as: time sheets and work records of attorneys in research, preparation of pleadings, conferences and telephone calls, and bills submitted to Tomlinson for services rendered, etc.) was not subject to discovery, because it was privileged. During this hearing the following colloquy took place between court and counsel:

"THE COURT: I still don't understand, at all, how that can damage your position.

MR. SKEER: I lose control of many facets of my case, Your Honor, with another plaintiff, who is working against me.

THE COURT: You are not going to lose control of any facet of your case as far as I am concerned.

MR. SKEER: Well, I— Suppose, Your Honor, that I wanted to dismiss this case and refile it in Federal Court. I can't—

THE COURT: There is nothing to prevent it.

* * *

THE COURT: Would you like to dismiss your lawsuit?

MR. SKEER: No, Your Honor, I don't intend to do that, but I am merely pointing out—

THE COURT: Well, then that is a circumstance that doesn't hurt you because the example you give, you promptly tell me you don't have that in mind anyhow.

MR. SKEER: Your Honor please, when you have witnesses on the witness stand and you are trying a case, a lawyer tries to present his evidence in his best way, and when a co-plaintiff is not cooperating, and is working contrary, his cross-examination of my witnesses, or his direct—

THE COURT: Don't you think that is something that I have some discretion to control? I do.

MR. SKEER: Well, certainly you do, Your Honor, but—

THE COURT: And I shall do it.

MR. SKEER: But it can be legally proper questioning and yet detrimental strategically to the progress of the case.

THE COURT: Well, those are matters that I think the trial court not only can but has a positive and permanent duty to control.

MR. SKEER: I agree with you, Your Honor.

THE COURT: And I assure you that will be done."

The court sustained objections to the motions to produce and most of the objections to interrogatories. Thereafter, Annbar and Continental took the depositions of several in-

terested persons and their attorneys to support the allegations of their motion to dismiss. Many questions propounded at these depositions were not answered on advice of counsel. The questions unanswered were certified to and examined by the court, and the objections sustained on trial day, August 3. On the same day, the court overruled the motion to dismiss intervenor's petition, and the cause proceeded to trial. Grounds stated for objections to questions asked at the taking of these depositions were, in general, that the information requested was privileged and not relevant to the issues, and that counsel for Annbar and Continental had no right to make an inquiry on behalf of the court as to the alleged collusion between Tomlinson and West Side.

In point XII, their last point, Annbar and Continental contend that the court erred in overruling their motion to dismiss Tomlinson's petition. In sub-points they contend that the court erred in (a) refusing to investigate their charge of collusion and in overruling this motion without such investigation, (b) denying discovery directed toward obtaining evidence relevant to their charge of collusion, and, (c) finding that Tomlinson did not appear at hearings of the city plan commission in support of other and previous redevelopment plans of West Side and corporations merged into it.

Their position is that it is the duty of the court to investigate a charge that pending litigation is collusive or pursuant to secret agreement and cooperation between parties. They cite Meeker v. Straat et al., 38 Mo.App. 239, 243 [1] which holds that an amicable suit may be brought to determine the respective rights of parties thereto; but if its purpose be to affect rights of one who is

not a party, it is collusive, and will not be entertained.[4] We do not disagree with the holdings in these cases; we agree with the principles they announce. However, in none of those cases is a situation presented like the one here. We have found no cases based on similar facts. A general statement in 1 C.J.S. Actions § 19, p. 1060, cited by both sides, seems to start us in the right direction: "The question as to the fictitious or collusive character of the action may be * * * brought to the attention of the court by * * * a person * * * who would be affected by the decision; and *where the court has reason to believe* that an action is of this character it should require the submission of evidence to the contrary * * *." (Emphasis supplied.) See also State ex rel. Chandler v. McQuillin, supra, 130 S.W. l.c. 20.

In Joylin Waterworks Co. v. Jasper County, 327 Mo. 964, 38 S.W.2d 1068, 1075 [4, 5], we said: "'* * * the mere circumstance alone that the proceeding is an amicable one, or that the parties have agreed as to the facts upon which the proceeding is to be submitted for determination, is not determinative of the moot character of the proceeding, or that the proceeding is collusive and pretended. *The determinative factor is whether the proceeding presents an actual controversy involving adverse interests between the parties.*'" (Emphasis supplied.)

When the court ruled on appellants' motion to dismiss intervenor's petition, it had before it (1) Tomlinson's veri-

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4. Other cases cited in support of this position are: City of Sedalia ex rel. Gilsonite Const. Co. v. Montgomery et al., 109 Mo.App. 197, 88 S.W. 1014, 1016; Williams v. Van Deusen et al., 203 Mo.App. 162, 219 S.W. 395, 397; Cape Girardeau, etc., v. Southern Illinois & Missouri Bridge Co., 215 Mo. 286, 114 S.W. 1084, 1085-1086; and a dissenting opinion in State ex rel. Chandler v. McQuillin, 229 Mo. 523, 130 S.W. 9.

fied motion to intervene (which it had sustained some two months before) alleging, inter alia, that as a property owner within the redevelopment area her interest was inadequately represented by existing plaintiffs not property owners therein; (2) appellants' allegations of suspicion of collusion; (3) the time consuming, unavailing efforts of appellants to prove their allegations; (4) an admission that Tomlinson had insisted that the case be set for an early trial date; and, (5) an indication from counsel for Annbar and Continental that one of their chief concerns was that Tomlinson's intervention could be "detrimental strategically to the progress of the case." The court also had before it affidavits of Tomlinson and her attorney and attorneys for West Side, that there was no agreement between West Side and Tomlinson for the purchase of her land and no agreement whereby West Side, or any person other than Tomlinson, would pay the fees of her attorneys for the prosecution of this suit.

[21, 22] The court believed, and found, with good reason, that it had before it an actual controversy between Tomlinson and West Side and that their interests were adverse. Under these circumstances the court was not obligated to require proof that the action was not collusive, or to make or direct an investigation of the charge. There was nothing to be accomplished by an investigation, except the probability of delay of a controversy of public moment which was entitled to a speedy determination. The question of whether the intervention of Tomlinson was the result of collusion is largely one of fact. Under the record presented, we see no reason to overthrow or disturb the trial court's determination of that question, or its ruling on the motion to dismiss or its rulings on the evidence sought by appellants on this question.

We find and hold that the action presented an actual controversy involving adverse interests between Tomlinson and respondents.

The judgment is affirmed.

All concur; and STONE, Special J., concurs.

DONNELLY, J., not participating because not a member of court when cause was submitted.

APPENDIX B

Findings of Fact, Conclusions of Law and Judgment

I.

FINDINGS OF FACT

1. The following terms when used herein shall have the meanings hereinafter set forth:

(a) "Annbar" shall mean the plaintiff, Annbar Associates, a co-partnership.

(b) "Continental" shall mean the plaintiff, Continental Building & Operating Co., Inc., an Arkansas corporation.

(c) "Tomlinson" shall mean the plaintiff-intervenor, Irene Tomlinson.

(d) "West Side" shall mean the defendant, West Side Redevelopment Corporation, a corporation formed under The Urban Redevelopment Corporations Law of Missouri.

(e) "Washington Avenue" shall mean Washington Avenue Redevelopment Corporation, a corporation formed under The Urban Redevelopment Corporations Law of Missouri and merged on October 31, 1961, into West Side.

(f) "Clarks Point" shall mean Clarks Point Redevelopment Corporation, a corporation formed under The Urban Redevelopment Corporations Law of Missouri and merged on October 31, 1961, into West Side.

(g) "City" shall mean the defendant, City of Kansas City, Missouri, a municipal corporation.

(h) "Redevelopment Law" shall mean Chapter 353, R.S.Mo. (1959), known as "The Urban Redevelopment Corporations Law".

(i) "Redevelopment Ordinance" shall mean Chapter 61, Revised Ordinances of Kansas City, Missouri, 1956, as amended.

(j) "Sub. Ord. 29352" shall mean Committee Substitute for Ordinance No. 29352 passed by the City Council of Kansas City, Missouri, on November 15, 1963, and authenticated as so passed.

(k) "Redevelopment Area" shall mean that real property located between the west line of Washington Street and the east line of Pennsylvania Avenue, from the south line of Seventh Street to the north line of Tenth Street, and that area at the southeast corner of Ninth and Washington Streets, fronting approximately 300 feet on Washington Street and 265 feet on Ninth Street, all in Kansas City, Jackson County, Missouri, and more particularly described in Sub. Ord. 29352.

(l) "Second Supplemental Contract" shall mean that certain contract dated December 16, 1963, by and between West Side and the city.

2. Annbar is the owner of the fees and leasehold estate comprising the property commonly known as the Muehlebach Hotel and Muehlebach Towers located at 105 West Twelfth Street, Kansas City, Missouri.

3. Continental is the lessee of that property commonly known as the Continental Hotel located at Eleventh & Baltimore Streets, Kansas City, Missouri.

4. Annbar and Continental are taxpayers, owning or leasing improved property described above, on which they each respectively pay ad valorem real estate taxes.

5. The hotel properties of Annbar and Continental are located within such proximity to the Redevelopment Area as to make the redevelopment project proposed by West Side, if developed in accordance with Sub. Ord. 29352, competitive with the business enterprises of Annbar and Continental. This finding is not intended to mean or infer "injurious competition" or "unfair competition".

6. Neither Annbar nor Continental owns any real property in the Redevelopment Area.

7. Annbar acquired the fee and leasehold estate comprising the property known as the Muehlebach Hotel and Muehlebach Towers on or about January 26, 1962.

8. The property known as the Continental Hotel was purchased by Mrs. Joy Scott, in August, 1958, and Continental Building & Operating Co., Inc. has been the lessee of said property prior and subsequent thereto, up to the present time.

9. Annbar and Continental did not oppose the redevelopment of the Redevelopment Area prior to 1962.

10. Tomlinson is a citizen and resident of Kansas City, Missouri, and owns the following described real property located in the Redevelopment Area on which she pays ad valorem real estate taxes:

> South 1/2 of Lot 8, Block 6, COATES ADDITION, a subdivision in Kansas City, Jackson County, Missouri.

11. West Side has been authorized to acquire, by the exercise of eminent domain, the real property owned by Tomlinson located in the Redevelopment Area and described in numerical paragraph 10 hereof.

12. The City is a municipal corporation organized and existing under a constitutional charter from the State of Missouri with capacity to sue and be sued.

13. Thomas F. Eagleton is the Attorney General of the State of Missouri.

14. On July 6, 1955, West Side filed with the City Clerk of the City a Development Plan, together with an application for the approval of such Development Plan.

15. On July 6, 1955, Clarks Point filed with the City Clerk of the City a Development Plan, together with an application for the approval of such Development Plan.

16. On July 6, 1955, Washington Avenue filed with the City Clerk of the City a Development Plan, together with an application for the approval of such Development Plan.

17. On September 7, 1955, West Side, Clarks Point and Washington Avenue each filed with the City Clerk of the City amendments to their respective Development Plans referred to in numerical paragraphs 14, 15 and 16 hereof, together with applications for approval thereof.

18. On September 19, 1955, in accordance with law, the City Plan Commission of the City held public hearings on said applications referred to in numerical paragraphs 14, 15, 16 and 17 hereof and after said hearings the City Plan Commission made the findings and determinations required by the Redevelopment Ordinance and recommended that the separate Development Plan of West Side, Clarks Point and Washington Avenue, be approved.

19. After public hearings, The City Council of the City, by Ordinances Nos. 19682, 19680 and 19681 passed on November 10, 1955, and authenticated as so passed, approved said separate Development Plans of West Side, Clarks Point and Washington Avenue, as Amended in accordance with the Redevelopment Ordinance.

20. On November 23, 1955, West Side, Clarks Point and Washington Avenue each entered into a contract with the City under the terms of which each of West Side, Clarks Point and Washington Avenue was obligated to construct office buildings in a portion of the Redevelopment Area in accordance with the terms of said Contracts.

21. On August 5, 1959, West Side, Washington Avenue and Clarks Point each filed with the City Clerk of the City further amendments to their separate Development Plans, as amended and approved, together with applications for approval of said amendments.

22. On August 17, 1959, the City Plan Commission of the City held public hearings on said applications referred to in numerical paragraph 21 hereof and after said hearings, the City Plan Commission made the findings and determinations required by the Redevelopment Ordinance and recommended that the further amendments to the Development Plans of West Side, Clarks Point and Washington Avenue, be approved.

23. After public hearings, the City Council of the City by Ordinance Nos. 24330, 24328 and 24329, passed September 18, 1959, and authenticated as so passed, approved the further amendments to the Development Plans, as theretofore amended, of West Side, Clarks Point and Washington Avenue, in accordance with the Redevelopment Ordinance.

24. On October 15, 1959, West Side, Clarks Point and Washington Avenue each entered into an amendment with

the City of their respective contracts referred to in numerical paragraph 20 hereof.

25. The contracts, as amended referred to in numerical paragraphs 20 and 24 hereof were not performed. Said contracts, as amended, were further amended by the Second Supplemental Contract.

26. Neither Tomlinson nor the plaintiffs, nor any representative of the then owners or operators of the Muehlebach Hotel and Towers or the Continental Hotel, appeared or objected at any of the public hearings referred to in numerical paragraphs 18, 19, 22 and 23.

27. On October 31, 1961, Clarks Point, Washington Avenue and West Side were lawfully merged, with West Side being the surviving corporation.

28. On July 9, 1962, West Side filed with the City Clerk of the City further amendments to its Development Plan, as amended, together with an application for approval thereof and the City Plan Commission held a public hearing on said application and after said hearing it made the findings and determinations required by the Redevelopment Ordinance and recommended the further amendments to the Development Plan of West Side be approved.

29. After public hearings, the City Council of the City defeated said Ordinance 27974 by a vote of 5 to 4 and, thereby did not adopt the recommendation of the City Plan Commission.

30. On August 28, 1963, West Side filed in the office of the City Clerk of the City an application for the approval of the following:

(a) the consolidation of the separate Development Plans, as theretofore amended, of West Side, Washington Avenue and Clarks Point (said Development

Plans and amendments being identified in numerical paragraphs 14, 15, 16, 17 and 21 hereof and having been approved by the City by the ordinances referred to in numerical paragraphs 19 and 23) into one Development Plan, that being the Development Plan of West Side; and

(b) the further amendment of the Development Plan of West Side, as so consolidated, so that the Development Plan of West Side, as so amended and consolidated, would read as set forth in the Development Plan attached as an exhibit to West Side's application, filed August 28, 1963.

31. On September 9, 1963 and on September 23, 1963, upon due legal notice, the City Plan Commission held public hearings on the application referred to in numerical paragraph 30 hereof.

32. On September 23, 1963, the City Plan Commission approved the application of West Side referred to in numerical paragraph 30 hereof, and forwarded to the City Council its report.

33. On October 25, 1963, Ordinance 29352 (and not Sub-Ord. 29352) was introduced on first reading before the City Council of the City.

34. On October 31, 1963, the Finance Committee of the City Council of the City held a public hearing on Ordinance 29352.

35. At the public hearing before said Finance Committee, the counsel for Annbar and Continental urged the City Council of the City to defeat said Ordinance 29352 on the following grounds:

(a) that the Redevelopment Law and Redevelopment Ordinance permit an unlawful grant of the exercise of the power of eminent domain in that the

blight is not required by said Redevelopment Law and Redevelopment Ordinance to be cleared;

(b) that the Redevelopment Law and Redevelopment Ordinance do not allow an urban redevelopment corporation to lease the Redevelopment Area to a lessee who will build the improvements;

(c) that the statement of financing contained in the Development Plan of West Side was not in sufficient detail to comply with the Redevelopment Ordinance.

(d) that the Development Plan of West Side permitted common control between West Side and the lessee;

(e) that the earnings of West Side's lessee were not limited and that failure to so limit the earnings permitted an illegal evasion of the net earnings limitation of the Redevelopment Law and Redevelopment Ordinance;

(f) that the Development Plan of West Side permitted a conflict of interest between West Side and its lessee which was against public policy.

(g) that an illegal tax exemption is granted to the lessee from West Side through a transfer of paper title to the improvements from the lessees to West Side.

(h) that the provisions of the Redevelopment Law and Redevelopment Ordinance limiting the net earnings derived from a redevelopment project were vague and ambiguous.

36. On November 8, 1963, the Finance Committee of the City Council of the City recommended that a substitute ordinance for Ordinance 29352, said substitute ordinance being Sub. Ord. 29352, be passed by the City Council of the City.

37. The City Council of the City on November 15, 1963, passed Sub. Ord. 29352 by a vote of 11 to 0 (one councilman being absent), said ordinance being authenticated as so passed.

38. The City and the public will receive substantial benefits as outlined in Exhibit 23, Part 54, of the Stipulation of Facts from the construction of the hotel project proposed by West Side under its amended Development Plan approved by the City by Sub. Ord. 29352.

39. That there is a need in the City for the type of hotel project proposed by West Side, said need being outlined in Exhibit 23, Parts 54 and 55, of the Stipulation of Facts.

40. On November 12, 1963, the attorneys for Annbar and Continental sent to the Mayor of the City, to Mr. Kenneth M. Myers, attorney for West Side, and to Mr. Allen J. Block and Mr. Lewis Kitchen, by registered mail, a notice stating that in the event Sub. Ord. 29352 was approved by the City Council of the City on November 15, 1963, said Annbar, together with Southwest Hotels, Inc., Dixon Operating Company, Pusateri's Hotel New Yorker and Aladdin Hotel Corporation (all of whom operate hotels in the City), intended to file and had ready for filing, a petition for a declaratory judgment and for an injunction to determine the validity of said ordinance. Each of the parties to whom said notice was sent received said notice. On November 18, 1963, attorneys for Annbar and Continental sent a copy of a petition to the Mayor of the City, to Mr. Kenneth M. Myers, attorney for defendant West Side, and to Mr. Allen J. Block and Mr. Lewis Kitchen, together with a letter advising said persons that Annbar and the other persons hereinbefore identified intended to file said petition on or about November 25, 1963. Said peti-

tion and letter were received by each of the parties to whom they were sent. None of Southwest Hotels, Inc., Dixon Operating Company, Pusateri's Hotel New Yorker, or Aladdin Hotel Corporation, ever filed any such suit.

41. On December 16, 1963, West Side and the City entered into the Second Supplemental Contract authorized by said Sub. Ord. 29352.

42. The Redevelopment Area is a "blighted area" within the meaning of said terms as defined in the Redevelopment Ordinance and the Redevelopment Law.

43. The interest in the lessee referred to in Section XIV of the Development Plan of West Side will be owned by Hilton Hotels Corporation and a group of persons known as "Kitchen and Associates" and comprised of Allen J. Block and Lewis E. Kitchen and such other persons as they may select.

44. West Side does not propose a joint hotel convention facility with the existing Hilton Inn in Kansas City, Missouri.

45. West Side has incurred and paid $33,000 in architectural expense in connection with the design of the project under its amended Development Plan approved by Sub. Ord. 29352 and, if said West Side is enjoined or prevented from building said hotel facility, West Side will suffer a loss in excess of $25,000.

II.

CONCLUSIONS OF LAW

1. Article VI, Section 21, of the Missouri Constitution of 1945, provides that laws may be enacted, and any city or county operating under a constitutional charter may enact ordinances, providing for the clearance, replanning, re-

construction, redevelopment and rehabilitation of blighted areas and for the taking or permitting the taking, by eminent domain, of property for such purposes, and when so taken the fee simple title to the property shall vest in the owner, who may sell or otherwise dispose of the property subject to such restrictions as may be deemed in the public interest.

2. The Redevelopment Law was enacted pursuant to the constitutional authority provided by Article VI, Section 21, of the Missouri Constitution.

3. The City is a constitutional charter city.

4. The Redevelopment Ordinance was enacted pursuant to the constitutional authority provided by Article VI, Section 21, of the Missouri Constitution, and in conformity with the Redevelopment Law.

5. The power of eminent domain may be exercised by an urban redevelopment corporation to acquire real property which is necessary to accomplish the purposes of the Redevelopment Law, under such conditions and only when so empowered by the legislative authority of the cities affected by the Redevelopment Law.

6. The power of eminent domain to acquire real property may be granted to an urban redevelopment corporation by Kansas City, Missouri only if the real property shall be devoted to the purposes and used subject to the conditions of a development plan approved by the City Council of Kansas City, Missouri.

7. Both the Redevelopment Law and the Redevelopment Ordinance require that all of the restrictions of a development plan continue in full force and effect until the blight in the project area has been cleared and the redevelopment project has been completed.

8. The Redevelopment Law permits a redevelopment corporation to sell or otherwise dispose of real property acquired by it for purposes of a redevelopment project free from the conditions and restrictions of the Redevelopment Law, but *prior* to the clearance of the blight and completion of the redevelopment project, it *does not* permit such a sale or other disposition free from any of the conditions and restrictions of the Redevelopment Ordinance, a development plan, an ordinance approving a development plan, or any contract with a city affected by the Redevelopment Law.

9. The Redevelopment Ordinance permits a redevelopment corporation to sell or otherwise dispose of real property acquired by it for the purpose of a redevelopment project, free from the conditions and restrictions of the Redevelopment Ordinance, but *prior* to the clearance of the blight and completion of the redevelopment project it *does not* allow such a sale or other disposition free of the conditions and restrictions of the development plan, the ordinance approving the development or the contract with the city.

10. The Redevelopment Law and Redevelopment Ordinance require the imposition of sufficient restrictions in the public interest to satisfy the provisions of Article VI, Section 21, of the Missouri Constitution.

11. Neither the Redevelopment Law nor the Redevelopment Ordinance permits land to be acquired by eminent domain and either owned or sold for the private interest of a private enterprise without restrictions to protect the public interest.

12. The granting of the power of eminent domain to urban redevelopment corporations pursuant to the provisions of the Redevelopment Law and Redevelopment Ordi-

nance does not violate either the Missouri or United States Constitutions in that a public purpose is required to be fulfilled in all events.

13. West Side is an urban redevelopment corporation organized and existing pursuant to the Redevelopment Law.

14. The power of eminent domain granted to West Side by Sub. Ord. 29352 passed by the City Council of the City, on November 15, 1963, and authenticated as so passed, requires that the blight in the redevelopment area be cleared and that the redevelopment project be constructed.

15. Sub. Ord. 29352 permits a sale or other disposition of real property embraced within the redevelopment project of West Side free from the conditions and restrictions of the Redevelopment Ordinance, but prior to the clearance of the blight and completion of the redevelopment project it *does not* permit such a sale or other disposition free of the conditions and restrictions of Sub. Ord. 29352, the Development Plan, or the Second Supplemental Contract between West Side and the City.

16. Sub. Ord. 29352 requires that blight be cleared from, and a redevelopment project be constructed on, the real property described in the Development Plan of West Side, and such requirements are sufficient restrictions and safeguards in the public interest as contemplated by Article VI, Section 21, of the Missouri Constitution and serve a public purpose.

17. The granting of the power of eminent domain to West Side pursuant to Sub. Ord. 29352 does not violate either the Missouri or United States Constitutions in that a public purpose must be fulfilled under the provisions of Sub. Ord. 29352, the Development Plan and the Second Supplemental Contract.

18. The City Plan Commission and City Council of the City have found and determined that the Development Plan proposed by West Side and approved by the City serves a public purpose.

19. Sub. Ord. 29352 does not evade the restrictions required by the Redevelopment Law or the Redevelopment Ordinance.

20. The Redevelopment Law, the Redevelopment Ordinance and Sub. Ord. 29352 limit the net earnings derived from the redevelopment project of West Side to a sum equal to 8% per annum upon the entire cost of the redevelopment project.

21. The provisions of the Redevelopment Law and Redevelopment Ordinance imposing a limitation upon the net earnings of a redevelopment corporation and a net earnings limitation upon the net earnings derived from a redevelopment project are clear and unambiguous.

22. The Redevelopment Law and the Redevelopment Ordinance provide that in computing the net earnings derived from the redevelopment project, that, among other things, the costs and expenses of maintenance and operation shall be deducted from gross earnings.

23. Sub. Ord. 29352 permits fees to be charged by a managing agent provided that said fees do not exceed the normal management fees charged by such agent for similar services.

24. A management fee of the type and under the circumstances contemplated by the Second Supplemental Contract is an expense of operation within the meaning of the Redevelopment Law and the Redevelopment Ordinance.

25. The management fee contemplated and permitted by the Second Supplemental Contract is not a device to ex-

ceed the 8% net earnings limitation derived from the redevelopment project.

26. The net earnings limitation imposed upon West Side and the net earnings limitation imposed upon the entire net earnings derived from the redevelopment project by Sub. Ord. 29352 does not permit evasion of such net earnings limitation.

27. West Side is a private corporation.

28. The lease and any other contracts permitted by Sub. Ord. 29352 and between West Side and the lessee or between such lessee or West Side and the officers, directors, stockholders or other persons having a financial or other interest in the lessee, do not render Sub. Ord. 29352 void or unconstitutional.

29. Contracts or agreements between private corporations having inter-locking directors or officers, or between private corporations with common ownership, or between a private corporation and its officers, directors or stockholders are not ipso facto void.

30. Any lease or management contract permitted by Sub. Ord. 29352 would not violate the provisions of the Redevelopment Law or Redevelopment Ordinance.

31. The City Council of the City has by legislative enactment of Sub. Ord. 29352 approved the Development Plan of West Side.

32. There have been no allegations or proof that the actions of the City Council in approving the Development Plan of West Side Redevelopment Corporation were arbitrary or were induced by fraud or misfeasance.

33. Sub. Ord. 29352 does not grant an illegal tax exemption.

34. Sub. Ord. 29352 complies with, and is not contrary to, the provisions of the Redevelopment Law and Redevelopment Ordinance.

35. Sub. Ord. 29352 is clear and unambiguous.

36. Sub. Ord. 29352 requires the clearance of the blight in the redevelopment area and the construction of the redevelopment project and, therefore, is in the public interest and serves a public purpose.

37. Neither Sub. Ord. 29352 nor the Development Plan are against the public policy of the State of Missouri.

38. Plaintiffs are not denied equal protection of the laws under either the United States or Missouri Constitution in that Sub. Ord. 29352 promotes the public interest and serves a public purpose.

III.

JUDGMENT

Now on this 24 day of August, 1964, the Court being duly advised in the premises finds the issues generally in favor of the defendants and against the plaintiffs.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the petition of plaintiffs Annbar Associates, a co-partnership, and Continental Building & Operating Co., Inc., and the petition of intervenor-plaintiff Irene Tomlinson be and they are hereby dismissed with prejudice and at the cost of plaintiffs and intervenor-plaintiff, for which let execution issue.

/s/ Tom J. Stubbs
Judge

APPENDIX C

CHAPTER 353

Urban Redevelopment Corporations Law

Sec.

353.010 Citation of chapter—application

353.020 Definitions

353.030 Organization of corporation—contents of articles of agreement

353.040 Life insurance company operating as urban redevelopment corporation—limitation on earnings—disposition of surplus

353.050 Use of word "redevelopment" prohibited—exceptions

353.060 Urban redevelopment corporation may operate one or more development projects—powers

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353.150 Borrowing of money and giving of security by corporation

353.160 May accept grants or loans from the United States government

353.170 City may acquire, clear, convey or lease property for use in redevelopment project

353.180 Any corporation may purchase shares of stock of urban redevelopment corporation

CROSS REFERENCE

Land clearance for redevelopment law, RSMo 99.300 to 99.660

353.010. Citation of chapter—application.—This chapter shall be known and may be cited and referred to as "The Urban Redevelopment Corporations Law", and shall apply to all constitutional charter cities in this state which now have or which may hereafter contain a population of three hundred and fifty thousand inhabitants or more, according to the last preceding federal decennial census.

(L. 1943 p. 751 §1, A. L. 1945 p. 1242)

353.020. Definitions.—The following terms, whenever used or referred to in this chapter shall, unless a different intent clearly appears from the context, be construed to have the following meaning:

(1) "Area" shall mean that portion of the city which the legislative authority of such city has found or shall find to be blighted, so that the clearance, replanning, rehabilitation, or reconstruction thereof is necessary to effectuate the purposes of this law. Any such area may include buildings or improvements not in themselves blighted, and any real property, whether improved or unimproved, the inclusion of which is deemed necessary for the effective clearance, replanning, reconstruction or rehabilitation of the area of which such buildings, improvements or real property form a part.

(2) "Blighted area" shall mean that portion of the city within which the legislative authority of such city determines that by reason of age, obsolescence, inadequate or outmoded design or physical deterioration, have be-

come economic and social liabilities, and that such conditions are conducive to ill health, transmission of disease, crime or inability to pay reasonable taxes.

(3) "City" or "such cities" shall mean those constitutional charter cities in this state which now have or which may hereafter have a population of three hundred and fifty thousand inhabitants or more according to the last preceding federal decennial census.

(4) "Development plan" shall mean a plan, together with any amendments thereto, for the development of all or any part of a blighted area, which is authorized by the legislative authority of any such city.

(5) "Legislative authority" shall mean the city council or board of aldermen of the cities affected by this law.

(6) "Mortgage" shall mean a mortgage, trust indenture, deed of trust, building and loan contract, or other instrument creating a lien on real property, to secure the payment of an indebtedness, and the indebtedness secured by any of them.

(7) "Real property" shall include lands, buildings, improvements, land under water, water front property, and any and all easements, franchises and hereditaments, corporeal or incorporeal, and every estate, interest, privilege, easement, franchise and right therein, or appurtenant thereto, legal or equitable, including restrictions of record, created by plat, covenant, or otherwise, right of ways, and terms for years.

(8) "Redevelopment" shall mean the clearance, replanning, reconstruction or rehabilitation of any blighted area, and the provision for such industrial, commercial, residential or public structures and spaces as may be appropriate, including recreational and other facilities incidental or appurtenant thereto.

(9) "Redevelopment project" shall mean a specific work or improvement to effectuate all or any part of a development plat.

(10) "Urban redevelopment corporation" shall mean a corporation organized under the provisions of this chapter, provided, however, that any life insurance company organized under the laws of, or admitted to do business in the state of Missouri may from time to time within five years after the effective date of this law, undertake, alone or in conjunction with, or as a lessee of any such life insurance company or urban redevelopment corporation, a redevelopment project under this chapter, and shall, in its operations with respect to any such redevelopment project, but not otherwise, be deemed to be an urban redevelopment corporation for the purposes of this section and sections 353.010, 353.040, 353.060 and 353.110 to 353.160.

(L. 1943 p. 751 §3, A. L. 1945 p. 1242 §2, A. L. 1947 V. I. p. 393)

353.030. Organization of corporation—contents of articles of agreement.—Corporations referred to in this chapter as urban redevelopment corporations may be organized in the following manner: The articles of agreement or association shall be prepared, subscribed and acknowledged, and filed in the office of the secretary of state pursuant to the general corporation laws of the state and shall contain:

(1) The name of the proposed corporation, which must have the words "redevelopment corporation" as a part thereof.

(2) The purposes for which it is formed, which shall be as follows: To acquire, construct, maintain and operate a redevelopment project or redevelopment projects in accordance with the provisions of this law.

(3) The amount of the capital stock, and if any be preferred stock the preference thereof.

(4) The number of shares of which the capital shall consist, all of which shall have a par value.

(5) The city in which its principal business office is to be located.

(6) Its duration, which shall not exceed ninety-nine years.

(7) The number of directors, which shall not be less than three, nor more than thirteen.

(8) The names and post-office addresses of the directors for the first year, at least one of whom shall be a resident of the state of Missouri.

(9) The names and post-office addresses of the subscribers to the articles of association or agreeement.

(10) A provision that in the event that income debentures certificates are issued by the corporation, the owners thereof shall have the same right to vote as they would have if possessed of certificates of stock of the amount and par value of the income debenture certificates held by them. The articles may provide for the retirement of income debenture certificates or preferred stock of the corporation as and when there shall be funds available in the treasury of the corporation from the receipt of amortization or sinking fund in installments for that purpose. Interest shall not be paid by the corporation upon such income debenture certificates or upon any bonded or other debt of the corporation in excess of six per cent per annum.

(11) A declaration that the corporation has been organized to serve a public purpose; that all real estate acquired by it and all structures erected by it are to be acquired for

the purpose of promoting the public health, safety and welfare, and that the stockholders of the corporation shall when they subscribe to and receive the stock thereof, agree that the net earnings of the corporation shall be limited to an amount not to exceed eight per cent per annum of the cost to such corporation of the redevelopment project including the cost of the land, or the balances of such cost as reduced by amortization payments; provided, that the net earnings derived from any redevelopment project shall in no event exceed a sum equal to eight per cent per annum upon the entire cost thereof. Such net earnings shall be computed after deducting from gross earnings the following:

(a) All costs and expenses of maintenance and operation;

(b) Amounts paid for taxes, assessments, insurance premiums and other similar charges;

(c) An annual amount sufficient to amortize the cost of the entire project at the end of the period, which shall be not more than sixty years from the date of completion of the project. The development plan may contain provisions satisfactory to the legislative authority authorizing such plan that any surplus earnings in excess of the rate of net earnings provided in this chapter may be held by the corporation as a reserve for maintenance of such rate of return in the future and may be used by the corporation to offset any deficiency in such rate of return which may have occurred in prior years; or may be used to accelerate the amortization payments; or for the enlargement of the project; or for reduction in rentals therein; provided, that any excess of such surplus earnings remaining at the termination of the tax relief granted pursuant to section 353.110 shall be turned over by the corporation to the city.

(12) A declaration that such corporations are organized for the purpose of the clearance, replanning, reconstruction or rehabilitation of blighted areas, and the construction of such industrial, commercial, residential or public structures as may be appropriate, including provisions for recreational and other facilities incidental or appurtenant thereto.

(L. 1943 p. 751 §7, A. L. 1945 p. 1242 §3, A. L. 1947 V. I. p. 393)

353.040. Life insurance company operating as urban redevelopment corporation—limitation on earnings—disposition of surplus.—1. Any life insurance company operating as an urban redevelopment corporation under this chapter shall be limited in its net earnings derived exclusively from the ownership or operation of any redevelopment project on real property owned by, or leased to, any such life insurance company, and constructed pursuant to a redevelopment plan to an amount not to exceed eight per cent per annum of the cost to such company of the redevelopment project including the cost of the land, or the balances of such cost as reduced by amortization payments; provided, that the net earnings derived from any redevelopment project shall in no event exceed a sum equal to eight per cent per annum upon the entire cost thereof. Such net earnings shall be computed after deducting from gross earnings the following:

(1) All costs and expenses of maintenance and operation;

(2) Amounts paid for taxes, assessments, insurance premiums and other similar charges;

(3) An annual amount sufficient to amortize the cost of the entire project at the end of the period, which shall

be not more than sixty years from the date of completion of the project.

2. The development plan may contain provisions satisfactory to the legislative authority authorizing such plan that any surplus earnings in excess of the rate of net earnings provided in this chapter may be held by the company as a reserve for maintenance of such rate of return in the future and may be used by the company to offset any deficiency in such rate of return which may have occurred in prior years; or may be used to accelerate the amortization payments; or for the enlargement of the project; or for reduction in rentals therein; provided, that any excess of such surplus earnings remaining at the termination of the tax relief granted pursuant to section 353.110 shall be turned over by the company to the city.

(L. 1945 p. 1242 §4, A. L. 1947, V. I. p. 393)

353.050. Use of word "redevelopment" prohibted—exceptions.—No corporation now organized under the laws of this state shall change its name to a name, and no such corporation hereafter organized shall have a name, containing the word "redevelopment" as a part thereof except as provided in this chapter. No foreign corporation now authorized to do business in this state shall change its name to a name, and no such corporation shall hereafter be authorized to do business in the state with a name containing the word "redevelopment" as a part thereof.

(L. 1943 p. 751 §10, A. L. 1945 p. 1242 §5)

353.060. Urban redevelopment corporation may operate one or more development projects—powers.—An urban redevelopment corporation shall operate under this chapter on one or more redevelopment projects pursuant to an

authorized development plan, and with respect to each such project shall have such rights, powers, duties, immunities and obligations, not inconsistent with the provisions of this law, as may be conferred upon it by city ordinance duly enacted by the legislative authority of a city affected by this chapter which is authorizing or has authorized such plan; provided, however, that notwithstanding the provisions of this section, such urban redevelopment corporation may, as a redeveloper under the provisions of the land clearance for redevelopment authority law, acquire property, by purchase or lease, from a land clearance for redevelopment authority as defined in said law, in the manner and under the terms and conditions specified in said law.

(L. 1945 p. 1242 §8, A. L. 1951 p. 364)

353.070. General corporation laws unless conflicting apply.—The provisions of the general corporation laws, as presently in effect and as hereafter from time to time amended, shall apply to urban redevelopment corporations, except where such provisions are in conflict with the provisions of this law.

(L. 1945 p. 1242 §7)

353.080. Notice of meetings to holders of income debentures.—In the event that any action with respect to which the holders of income debentures shall have the right to vote is proposed to be taken, notice of any meeting at which such action is proposed to be taken shall be given to such holders in the same manner and to the same extent as if they were stockholders entitled to notice of and to vote at such meeting, and any articles filed pursuant to law in the office of the secretary of state with respect to any such action, whether taken with or without meeting, and any affidavit required by law to be annexed

to such articles shall contain the same statements or recitals, and such articles shall be subscribed and acknowledged, and such affidavit shall be made, in the same manner as if such debenture holders were stockholders holding shares of an additional class of stock entitled to vote on such action, or with respect to the proceedings provided for in such document.

(L. 1945 p. 1242 §7)

353.090. Maintain reserves for specific purposes.—An urban redevelopment corporation shall establish and maintain depreciation, obsolescence, and other reserves, also surplus and other accounts, including, among others, a reserve for the payment of taxes according to recognized standard accounting practices.

(L. 1945 p. 1242 §8)

353.100. When corporation may pay interest on its income debentures or dividends on its stock.—No urban redevelopment corporation shall pay any interest on its income debentures or dividends on its stock during any dividend year unless there shall exist at the time of such payment no default under any amortization requirements with respect to its indebtedness, nor unless all accrued interest, taxes and other public charges shall have been duly paid or reserves set up for the payment thereof, and adequate reserves provided for depreciation, obsolescence and other proper reserves.

(L. 1945 p. 1242 §9)

353.110. Real property exempt from taxation—limitation.—1. The real property of urban redevelopment corporations acquired pursuant to this chapter shall not be subject to assessment or payment of general *ad valorem* taxes imposed by the cities affected by this law, or by

the state or any political subdivision thereof, for a period of ten years after the date upon which such corporations become owners of such real property, except to such extent and in such amount as may be imposed upon such real property during said period measured solely by the amount of the assessed valuation of the land, exclusive of improvements, acquired pursuant to this chapter and owned by such urban redevelopment corporation, as was determined by the assessor of the county in which such real property is located, or, if not located within a county, then by the assessor of such city, for taxes due and payable thereon during the calendar year preceding the calendar year during which the corporation acquired title to such real property, and the amounts of such tax assessments shall not be increased during said ten-year period so long as the real property is owned by an urban redevelopment corporation and used in accordance with a development plan authorized by the legislative authority of such cities.

2. In the event, however, that any such real property was tax exempt immediately prior to ownership by any urban redevelopment corporation, such assessor or assessors shall, upon acquisition of title thereto by the urban redevelopment corporation, promptly assess said land, exclusive of improvements, at such valuation as shall conform to but not exceed the assessed valuation made during the preceding calendar year of other land, exclusive of improvements, adjacent thereto or in the same general neighborhood, and the amount of such assessed valuation shall not be increased during the ten-year period aforesaid so long as the real property is owned by an urban redevelopment corporation and used in accordance with a development plan authorized by the legislative authority of such cities. For the next ensuing period of fifteen years *ad valorem* taxes upon such real property shall be meas-

ured by the assessed valuation thereof as determined by such assessor or assessors upon the basis of not to exceed fifty per cent of the true value of such real property, including any improvements thereon, nor shall such valuations be increased above fifty per cent of the true value of such real property from year to year during said period of fifteen years, so long as the real property is owned by an urban redevelopment corporation and used in accordance with an authorized development plan. After said period totaling twenty-five years, such real property shall be subject to assessment and payment of all *ad valorem* taxes, based on the full true value of the real property; provided, that after the completion of the redevelopment project, as authorized by law or ordinance whenever any urban redevelopment corporation shall elect to pay full taxes, or at the expiration of said twenty-five-year period, such real property shall be owned and operated free from any of the conditions, restrictions or provisions of this chapter, and of any ordinance, rule or regulation adopted pursuant thereto, any other law limiting the right of domestic and foreign insurance companies to own and operate real estate to the contrary notwithstanding.

(L. 1945 p. 1242 §10, A. L. 1947 V. I p. 393)

(1954) Section 353.110 is authorized by section 7, Article X of the Constitution and does not conflict with section 6, Article X. Land Clearance for Redevelopment Auth. v. City of St. Louis (Mo.) 270 S. W. (2d) 58.

353.120. Transfer by fiduciaries and public agencies of real property to a redevelopment corporation.—Notwithstanding any requirement of law to the contrary, or the absence of direct provision therefor in the instrument under which a fiduciary is acting, every executor, administrator, trustee, guardian or any other person, holding trust

funds or acting in a fiduciary capacity, unless the instrument under which such fiduciary is acting expressly forbids, also the state, its subdivisions, cities, all other public bodies, all public officers, corporations, organized under or subject to the provisions of the banking law (including savings banks, savings and loan associations, trust companies, private bankers and private banking corporations), the state commissioner of finance as conservator, liquidator or rehabilitator of any such person, partnership or corporation, person, partnership and corporations organized under or subject to the provisions of the insurance law, the superintendent of insurance as conservator, liquidator, or rehabilitator of any such person, partnership or corporation, any of which owns or holds any real property within any blighted area proposed to be cleared or redeveloped by an urban redevelopment corporation, may grant, sell, lease or otherwise transfer any such real property to an urban redevelopment corporation, and receive and hold any cash, mortgages, or other securities or obligations exchanged therefor by such urban redevelopment corporations, and may execute such instruments and do such acts as may be deemed necessary or desirable by them or it and by the urban redevelopment corporations in connection with the development and any development plan.

(L. 1943 p. 751 §18, A. L. 1945 p. 1242 §11)

353.130. Redevelopment corporation may acquire property.—1. An urban redevelopment corporation may acquire real property or secure options in its own name or, in the name of nominees, it may acquire real property by gift, grant, lease, purchase, or otherwise.

2. An urban redevelopment corporation shall have the right to acquire by the exercise of the power of eminent domain any real property in fee simple or other estate

which is necessary to accomplish the purpose of this chapter, under such conditions and only when so empowered by the legislative authority of the cities affected by this chapter.

3. An urban redevelopment corporation may exercise the power of eminent domain in the manner provided for corporations in chapter 523, RSMo; or it may exercise the power of eminent domain in the manner provided by any other applicable statutory provision for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired in like manner, provided that no real property belonging to any city, county, or the state, or any political subdivision thereof may be acquired without its consent.

(L. 1943 p. 751 §19, A. L. 1945 p. 1242 §12)

353.140. Occupancy of property acquired by corporation by previous owners—conditions.—When title to real property has been vested in an urban redevelopment corporation by gift, grant, devise, purchase, or by condemnation proceedings or otherwise, the urban redevelopment corporation may agree with the previous owners of such property, or any tenants continuing to occupy or use it, or any other persons who may occupy or use or seek to occupy or use such property, that such former owner, tenant or other persons may occupy or use such property upon the payment of a fixed sum of money for a definite term or upon the payment periodically of an agreed sum of money. Such occupation or use shall not be construed as a tenancy from month to month, nor require the giving of notice by the urban redevelopment corporation for the termination of such occupation or use or the right to such occupation or use, but immediately upon the expiration of the term for which payment has been made the urban redevelopment

corporation shall be entitled to possession of the real property and may maintain an action for either unlawful detainer or ejectment for the purpose of recovering immediate possession thereof.

(L. 1943 p. 751 §21, A. L. 1945 p. 1242 §13, A. 1949 H. B. 2081)

353.150. Borrowing of money and giving of security by corporation.—1. Any urban redevelopment corporation may borrow funds and secure the repayment thereof by mortgage which shall contain reasonable amortization provisions and shall be a lien upon no other real property except that forming the whole or a part of a single development area.

2. Certificates, bonds and notes, or part interest therein, or any part of an issue thereof, which are secured by a first mortgage on the real property in a development area, or any part thereof, shall be securities in which all the following persons, partnerships, or corporations and public bodies or public officers may legally invest the funds within their control:

(1) Every executor, administrator, trustee, guardian, committee or other person or corporation holding trust funds or acting in a fiduciary capacity;

(2) Persons, partnerships and corporations organized under or subject to the provisions of the banking law (including savings banks, savings and loan associations and trust companies);

(3) The state commissioner of finance as conservator, liquidator or rehabilitator of any such person, partnership or corporation;

(4) Persons, partnerships or corporations organized under or subject to the provisions of the insurance law; fraternal benefit societies; and

(5) The state superintendent of insurance as conservator, liquidator or rehabilitator of any such person, partnership or corporation.

3. Any mortgage on the real property in a development area, or any part thereof, may create a first lien, or a second or other junior lien, upon such real property.

4. Any urban redevelopment corporation may sell or otherwise dispose of any or all of the real property acquired by it for the purposes of a redevelopment project. In the event of the sale or other disposition of real property of any urban redevelopment corporation by reason of the foreclosure of any mortgage or other lien, through insolvency or bankruptcy proceedings, by order of any court of competent jurisdiction, by voluntary transfer or otherwise, and the purchaser of such real property of such redevelopment corporation shall continue to use, operate and maintain such real property in accordance with the provisions of any development plan, the legislative authority of any city affected by the provisions of this chapter, may grant the partial tax relief provided in section 353.110; but if such real property shall be used for a purpose different than that described in the redevelopment plan, or in the event that the purchaser does not desire the property to continue under the redevelopment plan, or if the legislative authority shall refuse to grant the purchaser continuing tax relief, the real property shall be assessed for *ad valorem* taxes upon the full true value of the real property and may be owned and operated free from any of the conditions, restrictions or provisions of this chapter.

(L. 1943 p. 751 §22, A. L. 1945 p. 1242 §14)

353.160. May accept grants or loans from the United States government.—Any urban redevelopment corporation

may accept grants or loans of money from the government of the United States or any department or agency thereof.

(L. 1943 p. 751 §23, A. L. 1945 p. 1242 §15)

353.170. City may acquire, clear, convey or lease property for use in redevelopment project.—Any city subject to this chapter shall have power:

(1) To acquire by the exercise of the power of eminent domain, or otherwise, an area designated on a master plan under the authority of the legislative authority of the city as a redevelopment area;

(2) To clear any such real property and install, construct, and reconstruct streets, utilities and any and all other city improvements necessary for the preparation of such area for use in accordance with the provisions of this chapter; and

(3) To sell or lease such real property for use in accordance with the provisions of this chapter.

(L. 1945 p. 1242 §16)

353.180. Any corporation may purchase shares of stock of urban redevelopment corporation.—Any corporation organized under the laws of the state of Missouri, or admitted to do business in the state of Missouri, shall have power to purchase any or all of the shares of stock of an urban redevelopment corporation organized under the provisions of this chapter.

(L. 1945 p. 1242 §17)

APPENDIX D

CHAPTER 61.

Urban Redevelopment.[1]

Section

61.010. Title.
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61.140. Filing of commission report; council action.
61.150. Findings and declarations of council.

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1. For provisions of state urban redevelopment corporation's law, see R. S. 1949, § § 353.010 to 353.180. For state land clearance for redevelopment law, see R. S. 1949, § § 99.300 to 99.660.

As to authority for such ordinance, see Const. Mo., art. VI, § 21; Char., § 128.1.

As to Housing Code, see ch. 29. As to subdivisions, see ch. 54.

61.160. Certificates of public convenience and necessity for corporation to acquire property by eminent domain.
61.170. Deposit when city acquires property for corporation.
61.180. Acquisition of property by city; resale.
61.190. Limitation of corporation's dividends and net earnings; other financial restrictions.
61.200. Disposition of surplus earnings of corporation.
61.210. Insurance companies as redevelopment corporations.
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61.250. Remedies for failure of corporation to follow plan.
61.260. Power of city to clear sites, etc.
61.270. Grants or loans from the United States government.
61.280. Land clearance for redevelopment authority.

Sec. 61.010. Title.—This chapter shall be known and may be cited and referred to as "The Urban Redevelopment Ordinance." (R. O. 1946, § 54-1.)

Sec. 61.020. Determination of necessity for legislation.—It is hereby determined and declared by the council that in certain portions of the city obsolete, decadent, substandard, insanitary or blighted areas exist occasioned by inadequate planning, excessive land coverage, lack of proper light, air or open space, defective design or arrangement of buildings, lack of proper sanitary facilities, or the existence of buildings, which, by reason of age, obsolescense, inadequate or outmoded design, or physical deterioration, have impaired the economic value of large areas, infecting them with blight, and that such areas are

characterized by depreciated values, impaired investments, reduced or negligible income and consequent tax delinquencies; that such conditions exist in areas where obsolete, decadent, substandard, insanitary, outworn or outmoded industrial, commercial or residential buildings prevail, and the same are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime; that such conditions occur chiefly in areas which are subdivided into small parcels with multiple ownership and frequently with confusion as to titles; that their assembly for purposes of clearance, replanning, rehabilitation, reconstruction and redevelopment is difficult and costly; that the existence of such conditions and the failure to clear, replan, rehabilitate, reconstruct or redevelop these areas results in progressive deterioration, in a loss of population by the areas, causes a wasteful expenditure of public funds for policing, and occasions large outlays for the creation of public facilities and services elsewhere; that it is impossible and uneconomic for individual owners to independently undertake to remedy such conditions; that such conditions require the employment of capital on an investment basis, allowing, however, the widest latitude in the amortization of any indebtedness created thereby; that such conditions further require the acquisition of adequate areas, at fair prices, the clearance of such areas through demolition of existing obsolete, decadent, inadequate, unsafe or insanitary buildings and the redevelopment of such areas under proper supervision with appropriate planning as to land use and construction policies; that the clearance, replanning, rehabilitation, reconstruction and redevelopment of such areas on a large scale basis are necessary for the public welfare and are public uses and purposes for which private property may be acquired by purchase or eminent domain; and that such obsolete, decadent, substandard, insanitary and blighted areas con-

stitute a menace to the health, safety, morals and welfare of the citizens of the city. Therefore, the necessity for the provisions herein enacted is hereby declared as a matter of legislative determination to be in the public interest. (R. O. 1946, § 54-2.)

Sec. 61.030. Acceptance of state enabling act.—The provisions of the "urban redevelopment corporations law," found at chapter 353, Revised Statutes of Missouri, 1949, are hereby accepted and shall apply to all persons and corporations operating under this chapter, insofar as the same may be applicable thereto. (Ord. 12823, 8-1-49.)

Sec. 61.040. Definitions.[2]—The following terms, whenever used or referred to in this chapter, shall, unless a different intent clearly appears from the context, be construed to have the following meanings:

(a) "Commission" shall mean the city plan commission of the city.

(b) "Area" shall mean that portion of the city which the city council has found or shall find to be blighted, so that the clearance, replanning, rehabilitation, or reconstruction thereof is necessary to effectuate the purposes of this chapter. Any such area may include buildings or improvements not in themselves blighted, and any real property, whether improved or unimproved, the inclusion of which is deemed necessary for the effective clearance, replanning, reconstruction or rehabilitation of the area of which such buildings, improvements or real property form a part.

(c) "Blighted area" shall mean those portions of the city which the council shall determine, that by reason of

2. For similar provisions of the state law, see R. S. 1949, § 353.020.

age, obsolescence, inadequate or outmoded design or physical deterioration, have become economic and social liabilities and that the conditions in such localities are conducive to ill health, transmission of disease, crime or inability to pay reasonable taxes.

(d) "Development plan" shall mean a plan, together with any amendments thereto, for the redevelopment of all or any part of a blighted area.

(e) "Redevelopment project" shall mean a specific work or improvement to effectuate all or any part of a development plan.

(f) "Development cost" shall mean the amount determined by the commission to be the actual cost of redevelopment, or of that part thereof for which such determination is made, and shall include, among other costs, the reasonable expense of planning the redevelopment, including preliminary studies and surveys, neighborhood planning, and architectural and engineering services, the reasonable value of the services performed in connection with the development plan, interest during construction, the actual cost of the real property or any part thereof where acquired partly or wholly in exchange for securities, the actual cost of demolition of existing structures, the actual cost of utilities, landscaping and roadways, the actual cost of construction, equipment and furnishing of buildings and improvements, including architectural, engineering and builder's fees, the actual cost of reconstruction, rehabilitation, redevelopment, remodeling, or initial repair of existing buildings and improvements, reasonable management and operation costs until the redevelopment is ready for use, and the actual cost of improving those portions of the area which are to remain open spaces, together with such additions to development costs as shall equal the actual cost of additions to or changes

in the redevelopment in accordance with the original development plan or after approved changes therein or amendments thereto.

(g) "Real property" shall include lands, buildings, improvements, land under water, waterfront property, and any and all easements, franchises and hereditaments, corporeal or incorporeal, and every estate, interest, privilege, easement, franchise and right therein, or appurtenant thereto, legal or equitable, including restrictions of record, created by plat, covenant, or otherwise, rights of way, and terms for years.

(h) "Mortgage" shall mean a mortgage, trust indenture, deed of trust, building and loan contract, or other instrument creating a lien on real property, to secure the payment of an indebtedness, and the indebtedness secured by any of them.

(i) "Redevelopment" shall mean the clearance, replanning, reconstruction or rehabilitation of any blighted area, and the provision for such industrial, commercial, residential or public structures and spaces as may be appropriate, including recreational and other facilities incidental or appurtenant thereto.

(j) "Urban redevelopment corporations law" shall mean chapter 353 of the Revised Statutes of Missouri, 1949, and any amendments thereto.

(k) "Person" shall mean any individual, firm, partnership, joint adventure, association, corporation (except an urban redevelopment corporation organized pursuant to the provisions of the "urban redevelopment corporations law," and any life insurance company, organized under the laws of, or admitted to do business in the state, undertaking a redevelopment project under this chapter), whether organized for profit or not, estate, trust, business trust, re-

ceiver or trustee appointed by any state or federal court, syndicate, or any other group or combination acting as a unit, and shall include the male as well as the female gender and the plural as well as the singular number.

(l) "Corporation" shall mean an urban redevelopment corporation organized under and pursuant to the provisions of the "urban redevelopment corporations law," and shall also include any life insurance company organized under the laws of, or admitted to do business in the state, which shall undertake a redevelopment project under the provisions of this chapter. (Ord. 12823, 8-1-49.)

Sec. 61.050. Application for approval of development plan; deposit upon filing plan.—Any person or corporation desiring approval of a development plan shall file an application for such approval with the city clerk, but such plan shall not be acted upon by the council until after a public hearing thereon has been held by the city plan commission and a report on such plan submitted by the commission to the council. No plan shall be accepted for filing unless it shall be accompanied by a deposit of five hundred dollars to be held by the director of finance, and to be applied to the reasonable cost of the examining, inspectional and supervisory services required in connection with such plan as provided in section 61.120. (Ord. 12823, 8-1-49.)

Sec. 61.060. Hearing and report by commission; two or more plans affecting same area.—The city clerk shall promptly refer each development plan to the commission. The commission shall thereupon provide for a public hearing upon such redevelopment plan, and cause notice of the hearing thereon to be given by at least one publication in the newspaper doing the city printing not less than ten days before the date of the hearing. All interested parties may be heard at such hearing. No other development plan,

however, which proposes the acquisition of all or any part of the real property in the area described in any development plan then on file with the city clerk, or with the commission, shall be considered by the council or the commission, unless such plan shall also be filed with the city clerk within not to exceed twenty days next following the date of the first hearing upon any previously filed plan. In the event more than one development plan is filed with the city clerk affecting all or any part of the same area, there shall be a public hearing on each plan. After each such hearing, the commission may make such other investigation as it deems proper, and thereafter submit a report on any such plans to the council. (R. O. 1946, § 54-6.)

Sec. 61.070. Contents of development plan.—A development plan shall contain:

(a) A legal description of the development area by metes and bounds or other definite designation;

(b) A statement of the various stages, if more than one is intended, by which the development is proposed to be constructed or undertaken, and the approximate time limit for the completion of each stage, together with a legal description of the real property to be included in each stage;

(c) A statement of the existing buildings or improvements in the development area to be demolished immediately, if any;

(d) A statement of existing buildings or improvements in the development area not to be demolished immediately, if any, and the approximate period of time during which the demolition, if any, of each such building or improvement is to take place;

(e) A statement of the proposed improvements, if any, to each building not to be demolished immediately, any

proposed repairs or alterations to such buildings, and the approximate period of time during which such improvements, repairs or alterations are to be made;

(f) A statement of the type, number and character of each new industrial, commercial, residential or other building or improvement to be erected or made;

(g) A statement of those portions, if any, of the blighted area which may be permitted or will be required to be left as open space, the use to which each such open space is to be put, the period of time each such open space will be required to remain an open space and the manner in which it will be improved and maintained, if at all;

(h) A statement of those portions, if any, of the blighted area which are proposed to be sold, donated, exchanged or leased to the board of education, public library board, art commission or other public agency, and an outline of the terms of such proposed sale, donation, exchange or lease;

(i) A statement of the proposed changes, if any, in zoning ordinances or maps, necessary or desirable for the redevelopment, and its protection against blighting influences;

(j) A statement of the proposed changes, if any, in streets or street levels, and any proposed street closings;

(k) A statement of the character of the existing dwelling accommodations, if any, in the blighted area, the approximate number of families residing therein, together with a schedule of the rentals being paid by them, and a schedule of the vacancies in such accommodations, if any, together with the rentals demanded therefor;

(l) A statement of the housing accommodations available in other locations in the city for those persons who

will be displaced by the redevelopment project, with due consideration to racial groups;

(m) A statement of the character, type and quality of construction, approximate number of units, approximate rentals and approximate date of availability of the proposed dwelling accommodations, if any, to be furnished during construction and upon completion of the redevelopment;

(n) A detailed statement of the proposed method of financing the redevelopment;

(o) A statement of the persons who it is proposed will be active in or associated with the management of the redevelopment project during a period of at least one year from the date of the approval of the development plan;

(p) A statement giving the legal description, of the real property owned, or proposed to be purchased or to be acquired by eminent domain, and the reasons why acquisition by condemnation is proposed;

(q) A statement giving the legal description of the real property, if any, proposed to be purchased or acquired by eminent domain by the city in behalf of the proponents of the development plan, and the reasons why the aid of the city is sought for this purpose;

(r) The development plan, and any application to the commission for approval thereof, may also contain such other statements or exhibits as may be deemed relevant by the commission or by the proposer thereof. (R. O. 1946, § 54-7.)

Sec. 61.080. Determinations prior to approval by commission.—A development plan shall not be approved by the city plan commission until and unless the commission shall determine:

(a) That the area within which the redevelopment is to be made is blighted, and that redevelopment in accordance with the development plan is necessary or advisable to effectuate the public purposes declared in section 61.020;

(b) That the development plan is in accord with the master plan of the city;

(c) That the area is of sufficient size to allow its redevelopment in an efficient and economically satisfactory manner;

(d) That the various stages, if any, by which the redevelopment is proposed to be constructed or undertaken, as stated in the development plan, are practicable and in the public interest;

(e) That housing accommodations are or will soon be elsewhere available for all persons, including racial groups, who will be displaced by the redevelopment project, and that no undue hardship to such persons will be caused thereby;

(f) That public facilities, including, but not limited to school, fire, water, sewer, police, transportation, park playground and recreation, are presently adequate, or will be adequate, at the time that the redevelopment is ready for use, to service the area;

(g) That the proposed changes, if any, in zoning ordinances or maps and in streets and street levels, or any proposed street closings, are necessary or desirable for the redevelopment and its protection against blighting influences, and for the city as a whole; and

(h) The estimated cost of acquisition of real property which it is proposed the city will acquire for the proponents of the development plan, by the exercise of the power of eminent domain. (Ord. 12823, 8-1-49.)

Sec. 61.090. Conclusiveness of determination by commission; considerations in arriving at determination.—Any such determination by the commission as described in the foregoing section shall be conclusive evidence of the facts so determined except upon proof of fraud or willful misfeasance. In arriving at such determination, the commission shall consider only those elements of the development plan relevant to such determination under sub-paragraphs (a) through (h) of section 61.080 and relevant to the type of redevelopment which is physically desirable for the area concerned from a city planning viewpoint. After fully considering each development plan, the commission shall forthwith transmit its report thereon to the council. (R. O. 1946, § 54-9.)

Sec. 61.100. Conditions precedent to approval of plan by council.—The city plan commission may report to the city council for its approval or amendment to a development plan, but no such amendment to a development plan shall be approved, unless and until an application therefor has been filed with the commission by the proponents thereof containing those portions of the statements and information required by section 61.070, relevant to the proposed amendment, and unless and until the commission shall make the determinations required by section 61.080 relevant to the proposed amendment. (Ord. 12823, 8-1-49.)

Sec. 61.110. Commission to check compliance and make reports thereon—adoption of rules and regulations.—

(a) It shall be the duty of the commission, after a development plan has been approved by the City Council, to investigate and determine from time to time during construction of the re-development project whether the corporation undertaking such development plan is fully complying with the provisions thereof, in the manner

and at the times fixed therein for the performance of the various stages thereof.

(b) It shall also be the duty of the commission to make reports from time to time during the construction of the re-development project, and at least every six months, to the City Council regarding each redevelopment project and the performance or compliance with each development plan, and also as to compliance with the provisions of this chapter by any corporation operating thereunder.

(c) The City Council may, upon the recommendation of the commission and for good cause shown, grant to a corporation operating under an approved development plan an extension of time in which to complete the re-development project, or any step or portion thereof.

(d) When a corporation operating under an approved development plan shall have completed the redevelopment project in accordance with the provisions of the development plan, in the manner and at the time fixed therein for the performance of the various stages thereof, the commission, upon the written request of such corporation, shall conduct an investigation, and, if the commission determines that the project has been so completed, it shall recommend to the City Council that a certificate of full compliance be issued to such corporation, and the City Council may authorize the commission to issue a certificate of compliance which shall be conclusive evidence of such compliance, except upon proof of fraud.

The investigations and reports of the commission required by subsections (a) and (b) of this section shall not be required or made subsequent to the date of issuance of such certificate; provided, however, that every such corporation shall render annually to the director of finance, during the existence of the tax relief period provided in

section 61.240, three copies of its financial report for the preceding year, which report shall (1) disclose the earnings of the corporation and the disposition of any net earnings in excess of those provided for under section 61.190, and (2) the interest rate on income debentures, bonds, notes or other evidences of debt of the corporation; thereupon, the director of finance shall review the financial report of the corporation and thereafter he shall file with the City Council and the commission the said financial report, accompanied by his opinion, as to compliance by the corporation with section 61.190.

(e) The commission shall also have power to make and adopt such rules and regulations necessary and proper to effectuate the purposes of this chapter. (Ord. 23211, 10-17-58)

Sec. 61.120. Adoption of schedule of fees.—The commission may adopt a schedule of fees to be paid by the proponents of any development plan upon the filing of its report to the council upon each development plan, amendments thereto and other instruments in connection therewith. The amount of these fees shall not exceed the reasonable cost of the examining, inspectional and supervisory services required under this chapter, and shall be subject to the approval of the council. When approved by the council, these fees shall be charged to the proponents of such plan and paid into the city treasury by deducting the amount thereof from the five hundred dollar deposit described in section 61.050. If the total of such fees exceeds five hundred dollars, the excess amount shall be charged to and paid by the proponents of the development plan. (R. O. 1946, § 54-12.)

Sec. 61.130. Fees stated.—The schedule of fees adopted by the city plan commission of August 11, 1947, to be paid by the proponents of any development plan under the provisions of section 61.120, are hereby approved, and such fees shall be as follows:

1. Examination of original plans and minor recommended changes:
   (a) less than 15 families per acre.....$4.00 per acre
   (b) 15 or more families per acre.....$6.00 per acre
   (c) projects other than residential.....$4.00 per acre
2. Field examination of site.....$2.00 per acre
3. Appraisal of the value of property involved in project ..... At cost
4. Major revisions and changes in original plans—hourly charge ranging from $1.00 to $3.00 per hour depending upon the time required and the salaries of the staff members required for the work:
   (a) less than 15 families per acre, not to exceed .....$2.00 per acre
   (b) 15 or more families per acre, not to exceed .....$4.00 per acre
   (c) projects other than residential, not to exceed .....$2.00 per acre
5. Original supervision and inspection costs to be on the basis of $10.00 per inspection, with an average of not more than one inspection per ten working days during the period of construction.....$10.00 per inspection
6. Regular supervision and inspection costs to be provided in connection with a report by the commission at intervals of not longer than six months....$60.00 per inspection

7. Minimum fee for any redevelopment project submitted for approval by the city plan commission.....$200.00

Sec. 61.140. Filing of commission report; council action.—The report of the commission upon each development plan shall be filed with the city clerk, accompanied by an ordinance providing for the approval, disapproval or other action on such plan. If such ordinance provides for the approval of the plan, the council may, if it deems desirable, authorize the director of finance to enter into a contract on behalf of the city with the proposer or proposers of the plan, such contract to contain the provisions as embodied in the plan, the approving ordinance, a provision that the applicable provisions of this chapter shall be incorporated by reference into such contract, and a provision that the terms, conditions or provisions of the contract can be neither modified nor eliminated except by mutual agreement between the city and the proposer or proposers of the plan; provided, however, that no such contract shall be construed as an enlargement of the authority conferred upon the city by the "urban redevelopment law." The city clerk shall submit such ordinance, together with such report and plan, to the council at its next regular meeting thereafter. At such meeting, the ordinance and the development plan shall be referred to a committee for a public hearing thereon, in accordance with the Charter and the rules of the council relative to city ordinances.

After public hearings have been held upon development plans, if more than one development plan shall have been filed with the city clerk, together with the report of the committee thereon, the council shall: (a) Unconditionally approve the plan and may, if it deems desirable, authorize

the director of finance on behalf of the city to enter into a contract with the proposer or proposers thereof, or disapprove the plan, (b) approve the plan subject to such conditions, exceptions or restrictions as the council may deem to be in the public interest, or (c) refer such plan to the commission with recommendations as to changes or amendment to be made therein. (Ord. 12823, 8-1-49.)

Sec. 61.150. Findings and declarations of council.—In any ordinance approving a development plan, the council shall make the following findings and declarations:

(a) That the area included within a development plan is a blighted area, and that the clearance, redevelopment, replanning, rehabilitation, or reconstruction thereof is necessary for the public convenience and necessity.

(b) That if a corporation seeks to acquire all or any part of the real property within a blighted area by exercise of the power of eminent domain, such acquisition by the exercise of the power of eminent domain is for the public convenience and necessity.

(c) That approval of the development plan and construction of the redevelopment project are necessary for the preservation of the public peace, property, health, safety, morals and welfare. (R. O. 1946, § 54-14.)

Sec. 61.160. Certificates of public convenience and necessity for corporation to acquire property by eminent domain.—If the corporation proposing such development plan seeks to acquire by eminent domain in its own name all or any part of the real property described in the development plan, the council shall, by the ordinance approving such plan, determine that the public convenience and necessity will be served by the development plan and

redevelopment project, and shall grant to such corporation a certificate of public convenience and necessity authorizing and empowering such corporation to acquire by the exercise of eminent domain such real property in fee simple or other estate; provided, that such real property shall be devoted to the purposes and used subject to the conditions described in the development plan. Such corporation may thereafter exercise the power of eminent domain in the manner provided for corporations in article II, chapter 8, Revised Statutes of Missouri, 1939, and acts amendatory thereof or supplementary thereto, or it may exercise the power of eminent domain in the manner provided by any other applicable statutory provision. Property already devoted to a public use may be acquired in like manner; provided, that no real property belonging to the city or to the state or any political subdivision thereof may be acquired without its consent. (R. O. 1946, § 54-15.)

Sec. 61.170. Deposit when city acquires property for corporation.—

(a) If the person or corporation proposing such development plan seeks to have the city acquire by eminent domain or otherwise, and thereafter clear, all or any part of the real property described in the development plan, such person or corporation shall, at the time hereinafter provided, deposit in escrow with the director of finance, subject to the provisions of this chapter, a sum of money in cash or negotiable federal or municipal securities of a cash market value equal to the cost estimated by the commission to be incurred by the city in acquiring, or, if the clearance thereof is also sought, in acquiring and clearing such real property, conditional as hereinafter provided that such deposit shall constitute a bid for such real property by the person or corporation making such deposit when

such real property is offered for sale or lease by the city. Such bid shall equal the actual cost incurred by the city in acquiring or in acquiring and clearing such real property, and shall be applied as hereinafter provided.

(b) If the person or corporation making any such deposit is not the successful bidder for such real property, after it has been acquired or acquired and cleared by the city, then such deposit shall be returned by the city to the person or corporation making such deposit.

(c) By the term "cost" as used in this section and the following section is meant all expenditures by the city, including what is paid for such real property and the clearance thereof, appraisal, abstract, title and recording fees, court costs, witness fees, fees of the city plan commission, and all other expenses of acquiring and clearing such property, but shall not include the expense of the services of the city law and public works departments.

(d) All securities deposited in escrow with the director of finance shall be promptly placed by him in a safety deposit box under the joint control of the director of finance, city treasurer and city auditor. Access to such box, however, may be had at any time by any two of such persons. (R. O. 1946, § 54-16.)

Sec. 61.180. Acquisition of property by city; resale.—

(a) Within ten days after the council shall have approved any development plan, calling for the acquisition by the city by the exercise of the power of eminent domain or otherwise of all or any part of the real property described therein, the person or corporation submitting such plan shall deposit in escrow with the director of finance the cash amounts or securities required by section 61.170.

Thereafter the council shall determine by ordinance whether the real property described in such plan constitutes a blighted area as defined in this chapter and should in the public interest be redeveloped, and the council may provide that the city acquire such property and procure the fee simple title thereto by purchase, by the exercise of the power of eminent domain, or by other means. The payment therefor by the city, in whole or in part, may be made out of the general funds of the city, or, in whole or in part, by general obligation bonds or the proceeds of general obligation bonds. The city shall then proceed to acquire such real property in accordance with such ordinance. Whenever any real property, land, easement, right of way, use or right of any character is taken or damaged by the city for such purpose, just compensation shall be paid to the owner thereof in accordance with the ordinances and provisions of the Charter applicable thereto.

(b) After acquiring the title to such real property, the city shall sell such real property and all interest therein for the purpose of redevelopment, as hereinafter provided, subject to such restrictions, exceptions and conditions as may be recommended by the commission, or which the council deems to be in the public interest.

(c) No bid shall be considered by the council unless the bidder shall have filed a development plan within the time provided in section 61.060 and shall have made the escrow deposit required in section 61.170 within the time required by this section.

(d) If there be but one qualified bidder, such real property shall be sold to such bidder at not less than the acquisition cost of such real property to the city. If there be more than one qualified bidder, such real property shall be sold to the highest and best bidder. If any profit is

realized by the city from such sale, such profit shall be credited to the general fund. Each sale shall be approved by the council. The deposit of the successful bidder shall be applied upon the purchase price, and the city shall give due credit therefor. When such deposit is represented by securities, the city shall immediately sell the same at the current market price thereof at private sale for cash and apply the proceeds to the selling price of such real property. If such deposit should prove to be insufficient to equal the actual cost to the city of such real property, when such cost is determined after purchase, or by action of a condemnation jury, or otherwise, as the case may be, then such persons shall make an additional deposit with the director of finance, upon ten days' written notice from the director of finance, of a sum of money in cash equal to such additional acquisition cost as so determined, and failing to make such additional deposit, the city may, at its option, thereupon repeal the ordinance providing for the acquisition of such real property and dismiss the pending condemnation proceedings, if any. In such last event, the expenses of such uncompleted acquisition and condemnation proceedings, if any, other than the expense of the services of the city law and public works departments, shall be charged to and paid by the person or corporation so making such deposit and the amount thereof shall be withheld by the director of finance from the funds or securities so deposited in escrow, and applied by him to the payment of such expenses, and if more than one deposit has been made, then each person so making a deposit shall be charged equally for his share of such costs. The balance of such funds and securities so deposited in escrow shall then be returned to the owner thereof. Sale of such securities may only be made upon order of the council by resolution or ordinance. (R. O. 1946, § 54-17.)

Sec. 61.190. Limitation of corporation's dividends and net earnings; other financial restrictions.—

(a) No corporation whose development plan has been approved by the council shall:

(1) Issue income debentures, bonds, notes or other evidences of debt bearing or paying an interest rate in excess of six per cent per annum.

(2) Pay any interest on its income debentures or dividends on its stock, regardless of class or preference, during any dividend year unless there shall exist at the time of such payment no default under any amortization requirements with respect to its indebtedness, nor unless all accrued interest, taxes and other public charges shall have been duly paid or reserves set up for the payment thereof, and adequate reserves provided for depreciation, obsolescence and other proper reserves.[3]

(b) The net earnings of a corporation whose development plan has been approved by the council shall be limited to an amount not to exceed eight per cent per annum of the cost to such corporation of the redevelopment project, including the cost of the land or the balance of such total cost of the project as reduced by amortization payments; provided, that the net earnings derived from any redevelopment project shall in no event exceed a sum equal to eight per cent per annum upon the entire cost thereof. Such net earnings shall be computed after deducting from gross earnings the following:

(1) All reasonable costs and expenses of maintenance and operation.

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3. For similar provisions of the state law, see R. S. 1949, § 353.100.

(2) Amounts paid for taxes, assessing, insurance premiums and other similar charges.

(3) An annual amount sufficient to amortize the cost of the entire project at the end of the period, which shall be not less than twenty years nor more than sixty years from date of completion of the project. (Ord. 12823, 8-1-49.)

Sec. 61.200. Disposition of surplus earnings of corporation.—The development plan may, upon approval of the council, contain provisions that the surplus earnings provided under section 61.190 (b) of this chapter; (a) may be held by the corporation as a reserve for maintenance of such rate of return in the future and may be used by the corporation to offset any deficiency in such rate of return which may have occurred in prior years; or (b) may be used to accelerate the amortization payments; or (c) for the enlargement of the project; or (d) for reduction in rentals therein; provided, that at the termination of the tax relief granted pursuant to section 61.240, the urban redevelopment corporation shall make a strict accounting of surplus earnings and shall turn over to the city any excess of such surplus earnings not previously used as provided in (a), (b), (c) or (d) of this section. (Ord. 12823, 8-1-49.)

Sec. 61.210. Insurance companies as redevelopment corporations.[4]—Any life insurance company operating under this chapter shall be limited in its net earnings derived exclusively from the ownership and operation of any redevelopment project, constructed pursuant to a development plan, to an amount not to exceed eight per cent per annum upon any sums actually invested in or devoted to such redevelopment project after setting aside the reserves

4. For similar provisions of the state law, see R. S. 1949, § 353.040.

required by section 61.220; provided, however, that any surplus earnings in excess of such rate shall, in the discretion of the council, be held either: (a) as a reserve for future eight per cent per annum returns upon its investments, (b) for use in the maintenance or enlargement of the redevelopment project, or (c) for reduction in rentals charged tenants thereof. In each case, such net earnings shall be computed according to standard accounting practices. (R. O. 1946, § 54-20.)

Sec. 61.220. Accounting practice.—Every corporation operating under this chapter shall establish and maintain depreciation, obsolescence and other reserves, also surplus and other accounts, including a reserve for the payment of taxes, according to recognized standard accounting practices. (R. O. 1946, § 54-21.)

Sec. 61.230. Powers of redevelopment corporations.—

(a) An urban redevelopment corporation may acquire real property or secure options in its own name, or in the name of nominees, and it may acquire real property by gift, grant, lease, purchase or otherwise.[5]

(b) An urban redevelopment corporation may borrow funds and secure the repayment thereof by mortgage, which shall contain reasonable amortization provisions and shall be a lien upon no other real property except that forming the whole or a part of a single development area. Any mortgage on the real property in a development area, or any part thereof, may create a first lien, or a second or junior lien, upon such real property.[6]

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5. For similar provisions of the state law, see R. S. 1949, § 353.130.

6. For similar provisions of the state law, see R. S. 1949, § 353.150.

(c) An urban redevelopment corporation may sell or otherwise dispose of any or all of the real property acquired by it for the purpose of a redevelopment project. The ordinance approving any development plan, and any contract entered into pursuant thereto, may provide that in the event of the sale or other disposition of real property of any urban redevelopment corporation by reason of the foreclosure of any mortgage or other lien through insolvency or bankruptcy proceedings, or by order of any court of competent jurisdiction, or by voluntary transfer or otherwise, the partial tax relief provided under section 61.240 of this chapter shall inure to any purchaser of such real property so long as such purchaser shall continue to use, operate and maintain such real property in accordance with the provisions of the development plan. If such ordinance and contract do not so provide and the purchaser of such real property shall continue to use, operate and maintain such real property in accordance with the provisions of the redevelopment plan, the council may grant the partial tax relief provided in section 61.240. If such real property shall be used for a purpose different than that described in the redevelopment plan, or if the purchaser does not desire the property to continue under the redevelopment plan, or if the ordinance approving the plan does not provide for continuing tax relief and the city council shall refuse to grant the purchaser continuing tax relief, the real property shall be assessed for ad valorem taxes upon the full true value of the real property and may be owned and operated free from any of the conditions, restrictions or provisions of this chapter.[7] (Ord. 12823, 8-1-49.)

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7. For similar provisions of the state law, see R. S. 1949, § 353.150.

Sec. 61.240. Tax relief.[8]—

(a) The real property of a corporation acquired pursuant to this chapter shall not be subject to assessment of payment of general ad valorem taxes imposed by the city for a period of ten years after the date upon which such corporation became owner of such real property, except to such extent and in such amount as may be imposed upon such real property during such period measured solely by the amount of the assessed valuation of the land, exclusive of improvements, acquired pursuant to this chapter and owned by such corporation, as was determined by the assessor of Jackson County, for taxes due and payable thereon during the calendar year preceding the calendar year during which the corporation acquired title to such real property; and the amounts of such tax assessments shall not be increased by the city assessor during such ten-year period so long as the real property is owned by a corporation and used in accordance with a development plan authorized by the council.

(b) In the event, however, that any such real property was tax exempt immediately prior to ownership by any such corporation, the commission shall immediately request such county assessor to promptly assess such land, exclusive of improvements, in accordance with the provisions of section 10 of the "urban redevelopment corporations law."[9] The amount of such assessed valuation so fixed by the county assessor shall not be increased by the city assessor during the ten-year period next following the date upon which such corporation acquired ownership thereof, so long as such real property is owned by such corporation and

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8. For similar provisions of the state law, see R. S. 1949, § 353.110.

As to taxation generally, see ch. 55.

9. R. S. 1949, § 353.110.

used in accordance with the development plan authorized and approved by the council.

(c) For the next ensuing period of fifteen years, city ad valorem taxes upon such real property shall be measured by the assessed valuation thereof as determined by the city assessor upon the basis of not to exceed fifty per cent of the true value of such real property, including any improvements thereon, nor shall such valuations be increased over fifty per cent of the true value of such real property from year to year during the period of fifteen years, so long as such real property is owned by a corporation and used in accordance with an authorized development plan.

(d) After such periods, totaling twenty-five years, such real property shall be subject to assessment by the city and payment of all ad valorem taxes based on the full true value of the real property, and shall be owned and operated by the urban redevelopment corporation free from the conditions, restrictions and provisions of this chapter, the approving ordinance and any rule or regulation adopted pursuant to this chapter; provided, that at any time after the completion of the redevelopment project, as authorized by ordinance, the urban redevelopment corporation may elect to pay to the city a sum equivalent to the amount of the general ad valorem taxes, not including interest or penalties, which would have been levied on the full value of the property from the date of the completion of the project, and from that date such real property shall be owned and operated by the urban redevelopment corporation free from the conditions, restrictions and provisions of this chapter, the approving ordinance and any rule or regulation adopted pursuant to this chapter. (Ord. 12823, 8-1-49.)

Sec. 61.250. Remedies for failure of corporation to follow plan.—Whenever any person or corporation operating under an approved development plan does not substantially comply with the development plan within the time limits and in the manner for the completion of each stage thereof as therein stated, reasonable delays caused by unforeseen circumstances beyond their control alone excepted, or shall do, permit to be done, or fail, or omit to do anything contrary to or required of it by this chapter, or shall be about so to do, permit to be done, or fail, or omit to have done, then any such fact may be certified by the city plan commission to the city counselor who may and is hereby authorized to commence a proceeding in the circuit court in the name of the city to have such action, failure or omission or threatened action or omission stopped, prevented or rectified by injunction or otherwise, or in the name of the city to bring an action for damages against the urban redevleopment corporation for breach of any of the provisions of the urban redevelopment plan; provided, that in the event the city plan commission shall determine that the corporation has abandoned construction before completion of the project in accordance with the terms of an approved development plan, the real property included in such plan shall from that date be subject to assessment and payment of all ad valorem taxes based on the true full value of such real property; provided, however, that if any person or corporation shall propose more than one plan and such plans are approved as provided in this chapter, the failure to comply with one or more of such plans within the time limits and in the manner for the completion of each stage thereof as therein stated, shall not give the city any right of action with respect to the plans which have been fully complied with within the time limits and in the manner for the completion of each stage thereof as therein stated, and the real property

included in such plans which have been fully complied with shall be entitled to the tax relief provided for in this chapter. (C. S. 13191, 12-27-49.)

Sec. 61.260. Power of city to clear sites, etc.[1]—The city may: (a) Acquire by the exercise of the power of eminent domain, or otherwise, an area designated on any master plan of the city as a redevelopment area; (b) clear any such real property and install, construct and reconstruct streets, utilities and any and all other city improvements necessary for the preparation of such area for use in accordance with the provisions of this chapter; and (c) sell such real property for use in accordance with the provisions of this chapter. (R. O. 1946, § 54-27.)

Sec. 61.270. Grants or loans from the United States government.[2]—The city or any person or corporation may accept grants or loans of money from the government of the United States or any department or agency thereof, to effectuate the purposes of this chapter. (R. O. 1946, § 54-28.)

Sec. 61.280. Land clearance for redevelopment authority.—The city council hereby finds:

(1) That one or more blighted or insanitary areas, as defined in the "land clearance for redevelopment authority law"[3] exists in the city, and

(2) That the redevelopment of such areas is necessary in the interest of the public health, safety, morals or welfare of the residents of the city.

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1. For similar provisions of the state law, see R. S. 1949, § 353.170.

2. For similar provisions of the state law, see R. S. 1949, § 353.160.

3. See R. S. 1949, § 99.320.

Therefore, the city hereby authorizes and approves the exercise by the "land clearance for redevelopment authority of Kansas City, Missouri," within the corporate limits of the city, as the same now are or may hereafter be established, of all of the powers, functions, and duties of such an authority under and pursuant to the provisions of the "land clearance for redevelopment authority law" enacted by the 66th General Assembly as Senate Bill No. 129, approved July 11, 1951, and now set out in sections 99.300 to 99.660, inclusive, Missouri Revised Statutes, Cumulative supplement, 1951.

The director of public works is hereby authorized and directed to hereafter enter into a contract with the aforesaid authority on behalf of the city to the end that such authority shall take over, assume, continue and carry out all undertakings, obligations, rights, powers, plans and activities related to planned or existing land clearance projects. (C. S. 16120, 11-21-52.)

APPENDIX E

XIV

Detailed Statement of the Proposed Method of Financing the Redevelopment.

The estimated cost of the First Stage of the redevelopment (building and land) is approximately Eight Million Two Hundred Seventy Thousand Dollars ($8,270,000.00). Each additional story or level constructed as a part of the Second Stage is estimated to cost approximately Three Hundred Twenty-Five Thousand Dollars ($325,000.00). The total estimated cost of the Third Stage of the redevelopment project is Five Million Five Hundred Thousand Dollars ($5,500,000.00). West Side Redevelopment Corporation will acquire and own the project site for an approximate cost of Two Million Dollars ($2,000,000.00). It is proposed that West Side Redevelopment Corporation will lease the same to a lessee under a lease not to be less than twenty-five (25) years or more than ninety-nine (99) years, at a specified rental, which lease will require the lessee to construct and pay for the improvements in Plan, as amended, the description of which is hereby incorporated in this Section XVI with the same force and effect as if repeated herein in full, through private negotiation, except the property hereinafter described. It will be necessary that the following property be acquired through the use of the power of eminent domain contained in the Urban Redevelopment Corporations Law:

(a) All of Lots 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, Block 3, LUCAS PLACE, an addition in Kansas City, Jackson County, Missouri, according to the recorded plat thereof and the North

one-half of Lot 22, Block 3, said LUCAS PLACE and the East one-half of Lot 23, Block 3, said LUCAS PLACE, and all of Lot 24, Block 3, said LUCAS PLACE, except the West one-half thereof and the North 21-2/3 feet of the East 61 feet thereof, together with that part of the North-South alley in Block 3, LUCAS PLACE adjoining the above-described lots which will attach thereto upon vacation of said alley.

(b) All of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15, Block 6, COATES ADDITION, a subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof, together with that part of the North-South alley and the East-West alley in Block 6, COATES ADDITION, adjoining the above-described lots which will attach thereto upon vacation of said alleys.

Acquisition of the real estate described above in subparagraphs (a) and (b) by condemnation is proposed since it is not known whether the corporation will be able to acquire the same through private negotiations at a price which is reasonably related to its fair market value.

XVII

Statement Giving the Legal Description of the Real Property, If Any, Proposed to Be Purchased or Acquired by Eminent Domain by the City in Behalf of the Proponent of the Development Plan, and the Reasons Why the Aid of the City Is Sought for This Purpose.

It is not proposed that any real property be purchased or acquired by eminent domain by the City in behalf of the proponent of this Development Plan, although it is proposed that the property last described in Section XVI hereof be acquired by condemnation, if deemed necessary by the corporation, in the manner prescribed in Chapter 523, R.S. Mo.,

1959, and that the City Council of Kansas City, Missouri, authorize and empower West Side Redevelopment Corporation to so proceed with respect to said property.

XXII

Construction of Development Plan

Nothing contained in this Development Plan shall be construed to limit the powers or activities of the West Side Redevelopment Corporation except with respect to the project described in this Development Plan.

Section 2. That the Council hereby finds and declares that good cause has been shown for the approval of said amendments to the Development Plan of the West Side Redevelopment Corporation, consolidating and including therein the development plans of Washington Avenue Redevelopment Corporation and Clarks Point Redevelopment Corporation, and the findings and declarations made by the Council in Section 2 of Ordinance No. 19682 with respect to said development plan of West Side Redevelopment Corporation have not been affected by the amendments thereto and apply equally to the said Development Plan, as amended.

Section 3. That the Director of Finance be and he is hereby authorized and directed, on behalf of the City, to enter into a Second Supplemental Contract with West Side Redevelopment Corporation, the form of which supplemental contract is attached hereto and made a part of this ordinance, as "Exhibit B", said supplemental contract to contain numerical paragraphs 16(a) and (b), 20, 21, 22 and 23 as set forth in Exhibit B, the Council hereby declaring that said provisions are required in order to further assure that the public purposes of Chapter 61 of the Revised Ordinances of Kansas City, Missouri, 1956, as amended, be preserved.

Section 4. That the Council hereby determines that the public convenience and necessity will be served by the Development Plan, as amended, filed by the West Side Redevelopment Corporation and by the redevelopment project, and grants to the West Side Redevelopment Corporation a certificate of public convenience and necessity authorizing and empowering the said corporation to acquire by the exercise of eminent domain the following described real property, in fee simple:

> All of Lots 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, Block 3, LUCAS PLACE, an addition in Kansas City, Jackson County, Missouri, according to the recorded plat thereof and the North one half of Lot 22, Block 3, said LUCAS PLACE, and the East one half of Lot 23, Block 3, said LUCAS PLACE, and all of Lot 24, Block 3, said LUCAS PLACE, except the West one half thereof and the North 21-2/3 feet of the East 61 feet thereof, together with that part of the North-South alley in Block 3, LUCAS PLACE, adjoining the above-described lots which will attach thereto upon vacation of said alley.
>
> All of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15, Block 6, COATES ADDITION, a subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof, together with that part of the North-South alley and the East-West alley in Block 6, COATES ADDITION, adjoining the above-described lots which will attach thereto upon vacation of said alleys,

and that the Mayor be and he is hereby authorized to execute and deliver said certificate of public convenience and necessity to the West Side Redevelopment Corporation.

"EXHIBIT B"

Second Supplemental Contract

THIS SUPPLEMENTAL CONTRACT, entered into this ..... day of ....., 1963, by and between KANSAS CITY, MISSOURI, a municipal corporation, hereinafter referred to as the "City" and WEST SIDE REDEVELOPMENT CORPORATION, an urban redevelopment corporation of Missouri, hereinafter referred to as "West Side";

WITNESSETH:

WHEREAS, the Council of Kansas City, Missouri, did on November 10, 1955, pass Ordinance No. 19682, approving a Development Plan, as amended, submitted by West Side, and authorizing and directing the Director of Finance to enter into a contract with West Side for the redevelopment of an area described in said Development Plan; and pursuant thereto City and West Side did enter into a contract, dated November 23, 1955, for the redevelopment of such area; and

WHEREAS, an amendment to said Development Plan was approved by Ordinance No. 24330, passed September 18, 1959 and a supplemental contract authorized by said ordinance was entered into October 15, 1959; and

WHEREAS, the Council of Kansas City, did on November 10, 1955 pass Ordinance Nos. 19681 and 19680, approving the Development Plans, as amended, of Clarks Point Redevelopment Corporation (hereinafter referred to as "Clarks Point") and of Washington Avenue Redevelopment Corporation (hereinafter referred to as "Washington Avenue"), respectively, and authorizing and directing the Director of Finance to enter contracts with Clarks Point and Washington Avenue for the redevelopment areas described in said Development Plans; and

WHEREAS, pursuant thereto the City and Clarks Point did enter into a Contract, dated November 23, 1955, and the City and Washington Avenue did enter into a Contract, dated November 23, 1955, for the redevelopment of the areas described in said Development Plans; and

WHEREAS, amendments to said Development Plans of Clarks Point and Washington Avenue were approved by Ordinance Nos. 24329 and 24328, respectively, passed September 18, 1959, and supplemental contracts authorized by said ordinances were entered into with Washington Avenue and Clarks Point on October 15, 1959; and

WHEREAS, West Side, on July 9, 1962, filed with the City Clerk of Kansas City, Missouri, amendments to its Development Plan, as theretofore amended, and the Development Plans of Washington Avenue and Clarks Point, as theretofore amended, together with an application for the approval thereof, so as to combine, merge and incorporate the three (3) separate Development Plans, as theretofore amended, into one single Development Plan, being that of West Side, and to further amend said single Development Plan, which amendments were disapproved by the City Council of Kansas City, Missouri on January 11, 1963 by defeating Ordinance No. 27974; and

WHEREAS, the Council of Kansas City, Missouri did on ....., 1963, pass Ordinance No. ....., which ordinance approved the combining and merging of the Development Plans, as amended, of Washington Avenue and Clarks Point, with the Development Plan of West Side so as to result in one single Development Plan, being that of West Side, and approved certain amendments to the aforesaid Development Plan of West Side, as theretofore amended, and authorized and directed the Director of Finance to enter into a Second Supplemental Contract with

West Side, amending said contract between City and West Side dated November 23, 1955, as amended by the First Supplemental Contract, dated October 15, 1959;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants herein contained, the parties hereto agree that said Contracts, dated November 23, 1955, between City and Clarks Point and Washington Avenue, as amended by First Supplemental Contracts, dated October 15, 1959, shall be merged and incorporated into the Contract, dated November 23, 1955, as amended by First Supplemental Contract, dated October 15, 1959, between the City and West Side, so that there shall be one single Contract, being that between City and West Side, and that the Contract between the City and West Side shall be amended so that numerical paragraphs 1 to 19, both inclusive, thereof shall read as follows:

"1. That the provisions of the Urban Redevelopment Ordinance of Kansas City, Missouri, as amended, up to and including the date of this Second Supplemental Contract, and Ordinance No. 19680, Ordinance No. 19681, Ordinance No. 19682, Ordinance No. 24328, Ordinance No. 24329, Ordinance No. 24330 and Ordinance No. ..... , and the Development Plan, as amended, of West Side, and the provisions of the Urban Redevelopment Corporations Law of the State of Missouri, as amended up to and including the date of this Contract, are hereby incorporated herein by reference and made a part of this Contract.

2. (a) *First Stage.* That West Side, its successors or assigns, shall erect, or cause to be erected the following described new buildings and improvements:

(1) One (1) eight-story (excluding ground level) fireproof hotel, together with three (3) two-story motel type units. The aforesaid improvements will contain approximately 312 guest rooms, all as specifically

set out in the Development Plan of West Side, as amended.

(2) One (1) restaurant to be constructed of wood siding exterior over fireproof masonry exterior, all as specifically described in the Development Plan of West Side, as amended.

(3) One (1) two-story convention center building. The building is designed for use in connection with, but not limited to, conventions, exhibitions, shows and meetings, all as specifically set out in the Development Plan of West Side, as amended.

(4) One four (4) level parking garage containing approximately 370 parking spaces and located partially underground and beneath the new buildings and improvements described in subparagraphs (a)(1), (2) and (3). The four-level parking garage will be connected by a tunnel under Seventh Street to the Hotel (Hilton Inn) located at the Northwest corner of Seventh Street and Washington Street. The aforesaid new improvements are specifically described in the Development Plan of West Side, as amended.

(5) Two (2) bituminous paved parking lots containing approximately 384 parking spaces, all as specifically set out in the Development Plan of West Side, as amended.

(6) The new buildings and improvements described in subparagraphs (a)(1), (2), (3), (4) and (5) of this numerical paragraph 2 shall be erected upon the following described real property located in Kansas City, Jackson County, Missouri:

All of Block 6, COATES ADDITION, a subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof, together with all of the north and south alley lying in said Block 6, said COATES ADDITION, and together with all of the east and west alley lying in said Block 6, said COATES ADDITION.

All of Block 3, LUCAS PLACE, an addition in Kansas City, Jackson County, Missouri, according to the recorded plat thereof, together with all of the north and south alley lying in said Block 3, said LUCAS PLACE.

Lots 1 to 6, both inclusive, and all of the vacated alley 10 feet in width lying South of and adjoining said lots, in CASPER WIDMERS SUBDIVISION OF LOTS 17 and 18, BLOCK 4, HOPKINS RESURVEY OF BLOCKS 1, 2, 3 and 4, COATES ADDITION TO THE CITY OF KANSAS IN THE STATE OF MISSOURI, a subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof;

Also Lots 7 to 16, both inclusive, and the vacated alley 20 feet in width lying West of and adjoining said Lots 7, 8, 9, 10 and 12, BLOCK 4, HOPKINS RESURVEY OF BLOCKS 1, 2, 3 and 4, COATES ADDITION, a subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof;

Also, a vacated portion of Washington Street described as follows: Beginning at the Northwest corner of Lot 1 of said CASPER WIDMERRS SUBDIVISION; thence South along the West line of said Lot 1 and along the West line of the vacated alley lying South of and adjoining said Lot 1, and along the West lines of Lots 16 and 15, Block 4, of said HOPKINS RESURVEY to a point 170.2 feet South of the South line of Ninth Street; thence West 57/100ths of a foot; thence in a Northerly direction in a straight line to a point 75/100ths of a foot West of the point of beginning; thence East to the point of beginning, in Kansas City, Jackson County, Missouri.

(b) *Second Stage.* That West Side, its successors or assigns, shall have the right at any time prior to December 31, 1975, but shall not be required, unless

for two consecutive calendar years during the period commencing January 1, 1967 and ending December 31, 1974, the conditions set forth in subparagraphs (1) and (2) of Section II of the Development Plan, as amended, shall be met, to construct one or more (but not exceeding, in the aggregate, eight) additional stories to the hotel building described in subparagraph (a) (1) of this numerical paragraph 2, all as specifically set out in the Development Plan of West Side, as amended. The total number of guest rooms to be provided in said addition or additions shall not exceed, in the aggregate, approximately 208.

The new improvements described above, if constructed, shall be located upon the following described real property in Kansas City, Jackson County, Missouri:

All of Block 3, LUCAS PLACE, an addition in Kansas City, Jackson County, Missouri, according to the recorded plat thereof, together with all of the north and south alley lying in said Block 3, said LUCAS PLACE.

(c) *Third Stage.* That West Side, its successors and assigns, shall have the right at any time prior to December 31, 1980 (but shall not be required), to construct:

(1) One eight (8) story (excluding ground level) hotel building, together with three (3) two-story motel type units. The aforesaid hotel building will contain approximately 184 guest rooms and the motel type units will contain approximately 108 guest rooms (the total aggregate number of guest rooms provided in the hotel building and motel type units being approximately 292), all as specifically set out in the Development Plan of West Side, as amended.

(2) One two-level parking garage containing approximately 210 parking spaces and located partially underground and beneath the new buildings and im-

provements described above in subparagraph (1). West Side, may, but shall not be required, to construct a tunnel under Ninth Street connecting said parking garage with the improvements described in subparagraph (a) of this numerical paragraph 2. The aforesaid new improvements are specifically described in the Development Plan of West Side, as amended.

(3) West Side shall cause all of the parking provided as a part of the First Stage upon the real property described in subparagraph (4) below to be removed and eliminated.

(4) The new buildings and improvements described in subparagraphs (c) (1), (2) and (3) of this numerical paragraph 2 shall be erected, if constructed, upon the following described real property located in Kansas City, Jackson County, Missouri:

All of Block 6, COATES ADDITION, a subdivision in Kansas City, Jackson County, Missouri, according to the recorded plat thereof, together with all of the north and south alley lying in said Block 6, said COATES ADDITION, and together with all of the east and west alley lying in said block 6, said COATES ADDITION.

3. That West Side, its successors or assigns, shall have the right to alter, change or modify the interior of said buildings from time to time as deemed necessary or desirable by West Side, its successors or assigns, and that West Side, its successors or assigns, shall also have the right to use such buildings for any use or uses permitted by, and in accordance with the provisions of the applicable Zoning Ordinance.

4. That the buildings and improvements described above shall be constructed in three stages; and that the buildings and improvements described in subparagraph (a) of numerical paragraph 2 hereof shall be completed on or before December 31, 1966; that

West Side, its successors and assigns, shall have the right at any time prior to December 31, 1975, but shall not be required unless for two consecutive years during the period commencing January 1, 1967 and ending December 31, 1974, the conditions set forth in subparagraphs (1) and (2) of Section II of the Development Plan, as amended, are met, to construct or to cause to be constructed, the improvements described in subparagraph (b) of numerical paragraph 2 hereof; and, West Side, its successors and assigns, shall have the right at any time prior to December 31, 1980, but shall not be required, to construct or cause to be constructed the improvements described in subparagraphs (c) (1), (2) and (3), of numerical paragraph 2 hereof; provided, however, that construction and completion of such buildings and improvements are subject to a delay or delays due to strikes, lock-outs, labor disputes, pendency of legal actions, riots, fire or other casualty, Acts of God, the public enemy, accidents, lack of transportation, governmental restrictions or priority, or inability to obtain materials.

5. That West Side, its successors or assigns, shall demolish all presently existing buildings or improvements located in the development area on or before December 31, 1964; provided, however, that demolition of such existing buildings and improvements is subject to a delay or delays due to strikes, lock-outs, labor disputes, pendency of legal actions, riots, fire or other casualty, Acts of God, the public enemy, accidents, governmental restrictions or priority, or inability to obtain materials.

6. That West Side, its successors or assigns, shall maintain the new buildings and improvements and project area in a good state of repair and attractive in appearance.

7. That West Side, its successors or assigns, shall have complete and exclusive control over the con-

struction of the project insofar as the City is concerned; subject, however, to the rights and duties of the Commissioner of Buildings and Inspections to enforce the "Building Code" of Kansas City, and the regulations promulgated thereunder, and to the rights and duties of the City Plan Commission to inspect the project as provided in the Urban Redevelopment Ordinance; and West Side, its successors or assigns, shall have exclusive control over the management of the project, the fixing of rentals, and the selection or the rejection of guests, tenants or occupants of said buildings and improvements.

8. That as provided in Section 61.110 (d) of the Urban Redevelopment Ordinance, as amended, after the completion of the redevelopment project, upon the written request of West Side, its successors or assigns, the City Plan Commission shall conduct an investigation, and if it determines that the project has been completed according to the Development Plan, as amended, shall recommend to the City Council of Kansas City, Missouri, that a Certificate of Full Compliance be issued to West Side, its successors or assigns.

9. (a) That the real property hereinabove described shall not be subject to assessment or payment of general ad valorem taxes imposed by the City for a period of ten (10) years after the date upon which West Side, its successors or assigns, becomes the record owner of such real property except to such extent and in such amount as may be imposed upon such real property during said period measured solely by the amount of the assessed valuation of the land exclusive of improvements as was determined by the Assessor of Jackson County, Missouri, for taxes due and payable thereon during the calendar year preceding the calendar year during which West Side, its successors or assigns, acquired record title to such real property, and the amounts of such tax assessments shall not be increased by the City Assessor dur-

ing said ten (10) year period so long as the real property is used in accordance with the Development Plan, as amended; provided, however, that any portion of such real property as was tax exempt immediately prior to its acquisition by West Side, its successors or assigns, upon request of the City Plan Commission, shall be promptly assessed by the Assessor of Jackson County, Missouri, exclusive of improvements, in accordance with the provisions of Section 10 of the Urban Redevelopment Corporations Law of the State of Missouri, as now existing. The amount of such assessed valuation so fixed by the County Assessor shall not be increased by the City Assessor during the ten (10) year period next following the date upon which West Side, its successors or assigns, acquired title thereto so long as said real property is used in accordance with the Development Plan, as amended.

(b) That for the next ensuing period of fifteen (15) years, City ad valorem taxes upon such real property shall be measured by the assessed valuation thereof as determined by the City Assessor upon the basis of not to exceed fifty percent (50%) of the true value of such real property, including any improvements thereon, nor shall such valuation be increased over fifty percent (50%) of the true value of such real property from year to year during said period of fifteen (15) years so long as said real property is used in accordance with the Development Plan, as amended.

(c) That after said periods, totaling twenty-five (25) years, such real property shall be subject to assessment by the City and payment of all ad valorem taxes based on the full true value of the real property, and shall be owned and operated by West Side, its successors or assigns, free from the conditions, restrictions and provisions of the Urban Redevelopment Corporations Law of the State of Missouri, of the Urban Redevelopment Ordinance, of any rules or regulations adopted pursuant thereto, of the Ordinance ap-

proving the Development Plan, as amended, of the Development Plan, as amended, and of this Contract; provided, that at any time after the completion of the redevelopment project, West Side, its successors or assigns, may elect to pay to the City a sum equivalent to the amount of the general ad valorem taxes not including interest or penalties, which would have been levied by the City on the full value of the property from the date of the completion of the project and from the date of such election the real property shall be owned and operated by West Side, its successors or assigns, free from the conditions, restrictions and provisions of the Urban Redevelopment Corporations Law of the State of Missouri, of the Urban Redevelopment Ordinance, of any rules or regulations adopted pursuant thereto, of the Ordinance approving the Development Plan, as amended, of the Development Plan, as amended, and of this Contract.

(d) That the tax relief provided in this paragraph 9 shall apply to general ad valorem taxes only and shall not be taken to exempt West Side, its successors or assigns, in whole or in part from special assessments or from service charges which may be made by the City for garbage and trash collection, sewer rentals or other services.

(e) To induce Kansas City, Missouri to grant the tax relief herein provided, West Side Redevelopment Corporation agrees:

(1) In the event the amount of general ad valorem taxes imposed by Kansas City, Missouri upon the real property described in Section I of the Development Plan, as amended, for any tax year in which West Side Redevelopment Corporation shall receive said partial tax relief therein, shall be less than $1,680.00 in the aggregate, West Side Redevelopment Corporation shall pay to the City Treasurer of Kansas City, Missouri on or before the date upon which general ad valorem taxes become de-

linquent for that tax year, an amount equal to the difference between the amount of said general ad valorem taxes so imposed upon said real property for that tax year and $1,680.00; and

(2) In the event the amount of general ad valorem taxes imposed by Jackson County, Missouri, and the State of Missouri upon the real property described in Section I of the Development Plan, as amended, for any tax year in which West Side Redevelopment Corporation shall receive said partial tax relief therein, shall be less than $4,110.00 in the aggregate, West Side Redevelopment Corporation shall pay to the County Collector of Jackson County, Missouri on or before the date upon which general ad valorem taxes become delinquent for that tax year, an amount equal to the difference between the amount of said general ad valorem taxes imposed on said real property for that tax year and $4,110.00.

10. (a) That the net earnings of West Side, its successors or assigns, from the redevelopment project described herein during the period in which the tax relief set out in paragraph 9 hereof is enjoyed shall be limited to an amount not to exceed eight percent (8%) per annum of the cost to West Side, its successors or assigns, of the redevelopment project, including the cost of the land or the balances of such total cost of the project as reduced by amortization payments, provided that the net earnings derived from the project shall in no event exceed a sum equal to eight percent (8%) per annum upon the entire cost thereof. Such net earnings shall be computed after deducting from gross earnings the following:

(1) All reasonable costs and expenses of maintenance and operations.

(2) Amounts paid for taxes, assessments, insurance premiums and other similar charges.

(3) An annual amount sufficient to amortize the cost of the entire project at the end of the period which shall be not less than twenty (20) years, nor more than sixty (60) years from the date of completion of the project.

(b) Surplus earnings of West Side, its successors or assigns, in excess of those provided for in subparagraph (a) of this paragraph 10 may be used for any one or more of the following purposes:

(1) May be held by West Side, its successors or assigns, as a reserve for maintenance of such rate of return in the future and may be used by West Side, its successors or assigns, to offset any deficiency in such rate of return which may have occurred in prior years,

(2) may be used to accelerate the amortization payments,

(3) may be used for the enlargement of the project, and

(4) may be used for a reduction in rentals therein.

At the termination of the tax relief provided for in paragraph 9 hereof, West Side, its successors or assigns, shall make a strict accounting of surplus earnings and shall turn over to the City any excess of such surplus earnings not previously used for one or more of the purposes herein set forth.

11. That West Side, its successors or assigns, shall not issue income debentures, bonds, notes or other evidences of debt bearing or paying an interest rate in excess of six percent (6%) per annum, nor shall it pay any interest on its income debentures or dividends on its stock regardless of class or preference, during any dividend year unless there shall exist at the time of such payment no default under any amortization requirements with respect to its indebted-

ness, nor unless all accrued interest, taxes and other public charges shall have been duly paid or reserves set up for the payment thereof, and adequate reserves provided for depreciation, obsolescence and other proper reserves.

12. That West Side, its successors or assigns, shall render annually to the City Council during the existence of the tax relief period provided in paragraph 9 hereof, a financial report for the preceding year, prepared by a Certified Public Accountant, which report shall disclose the earnings of the corporation from the project described herein and the disposition of any net earnings in excess of those provided for in paragraph 10 hereof, and the interest rate on income debentures, bonds, notes, or other evidences of debt of West Side, its successors or assigns, provided, that West Side, its successors or assigns, if requested by the City in writing, shall at its own expense have an audit made of its books by an auditing firm to be named by the City, and the findings of such audit shall be made available to the Director of Finance of the City, but such an audit shall not be requested by the City nor required of West Side, its successors or assigns, more often than every two (2) years.

13. That West Side, its successors or assigns, shall establish and maintain depreciation, obsolescence and other reserves, also surplus and other accounts, including a reserve for the payment of taxes according to recognized standard accounting practices.

14. That in the event of the sale or other disposition of any or all of the real property of West Side, its successors or assigns, hereinabove described by reason of the foreclosure of any mortgage or other lien through insolvency or bankruptcy proceedings, or by order of any court of competent jurisdiction, or by voluntary transfer or otherwise, the tax relief provided in paragraph 9 of this Contract and under the provisions of the Urban Redevelopment Corporations

Law of the State of Missouri and the Urban Redevelopment Ordinance shall inure, with respect to the real property so sold or otherwise disposed of, to any purchaser or purchasers of such real property so long as such purchaser or purchasers shall continue to use, operate and maintain such real property in accordance with the provisions of the Development Plan, as amended; provided, however, that if such real property shall be used for a purpose different than that described in the Development Plan, as amended, or if the purchaser does not desire the property to continue under the Development Plan, as amended, the real property shall be assessed for ad valorem taxes upon the full true value of such real property and may be owned and operated free from any of the conditions, restrictions, or provisions of the Urban Redevelopment Corporations Law of the State of Missouri, of the Urban Redevelopment Ordinance, of any rules or regulations adopted pursuant thereto, of the Ordinance approving the Development Plan, as amended, of the Development Plan, as amended, and of this Contract.

15. That the terms, conditions and provisions of this Contract, and of the Development Plan, as amended, can be neither modified nor eliminated except by mutual agreement between the City and West Side, its successors or assigns; provided, however, that this Contract shall not be construed as an enlargement of the authority conferred upon the City by the Urban Redevelopment Corporations Law.

16. (a) That this Contract shall become effective upon the execution hereof by the City and West Side and shall remain in full force and effect until the completion of the new buildings and improvements included in the First Stage of the project as described in paragraph 2(a) hereof, and so long thereafter as West Side, its successors or assigns, shall enjoy tax relief under paragraph 9 of this Contract, and under the provisions of the Urban Redevelopment Corpora-

tions Law of the State of Missouri, and that at the termination of such relief, this Contract shall terminate and become null and void.

(b) That West Side, its successors and assigns, shall complete the demolition of all existing buildings and improvements pursuant to paragraph 5 hereof and complete the construction of the new buildings and improvements included in the First Stage of the project as described in paragraph 2(a) hereof, notwithstanding the termination of the tax relief under paragraph 9 hereof, or any other provision of the Contract to the contrary.

17. That the rights and privileges given to West Side, its successors or assigns, by this Contract, and the duties and obligations imposed on West Side, its successors or assigns, hereby shall apply only to the development project described herein.

18. That if West Side, its successors or assigns, do not substantially comply with this Contract, or with the Development Plan, as amended, within the time limits and in the manner for the completion of each stage thereof as therein stated, reasonable delays caused by unforeseen circumstances beyond its control excepted, or shall do, permit to be done, or fail or omit to do anything contrary to or required of it by this Contract, the Urban Redevelopment Ordinance or the Urban Redevelopment Corporations Law of Missouri, or shall be about so to do, permit to be done, or fail or omit to have done, then upon the certification of such fact to the City Counselor by the City Plan Commission, the Council or the Director of Finance, the City may commence a proceeding in the Circuit Court to have such action, failure or omission or threatened action or omission stopped, prevented or rectified by injunction or otherwise, or the City may bring an action for damages against West Side, its successors or assigns, for breach of any of the provisions of the Development Plan, as amended,

or of this Contract; provided, that in the event the City Plan Commission shall determine that West Side, its successors or assigns, have abandoned construction before completion of the project in accordance with the terms of the Development Plan, as amended, and of this Contract, the real property included in such plan shall from that date be subject to assessment and payment of all ad valorem taxes based on the true full value of such real property; provided, further, that this paragraph shall not be construed so as to preclude West Side, its successors or assigns, from making the election provided in paragraph 9(c) of this Contract.

19. In the event that West Side, its successors or assigns, shall be prohibited from performing its covenants and agreements herein contained, or contained in the aforesaid Development Plan, as amended, by the order of any court of competent jurisdiction, or in the event that the Urban Redevelopment Corporations Law of the State of Missouri or the Urban Redevelopment Ordinance of Kansas City, Missouri, shall be declared invalid in whole or in part, then, and in any such event, either the City or West Side, its successors or assigns, may cancel or terminate this Contract by giving written notice of its intention so to do to the other within sixty (60) days thereafter. If this Contract is so cancelled, all duties, obligations and liabilities of the parties hereto shall cease and terminate as of the termination date.

20. That West Side: (i) shall not control the lessee under the lease referred to in Section XIV of the Development Plan, as amended; (ii) shall not be controlled by such lessee; and (iii) shall not be under common control with such lessee. The terms "control" and "controlled", wherever used herein shall be deemed to mean the ownership, directly or indirectly, through a corporation, trust, partnership or other means, of any stock of a corporation which either is entitled to vote or is entitled to participate

in the assets of the corporation, or the ownership, directly or indirectly, of any equity interest in any proprietorship, partnership, limited partnership, association or other business entity. A person shall be deemed to own any stock or equity interest which is owned by his or her spouse, ancestors or descendants, or any partnership of which he or she is a member or any estate or trust of which he or she is a beneficiary. Any person holding an option shall be deemed to own the stock or interest covered thereby.

21. That West Side, its successors and assigns, shall render annually to the City Council during the existence of the tax relief period provided in paragraph 9 of said Second Supplemental Contract, a written, sworn statement, that there exists no control between West Side and the lessee under the lease referred to in Section XIV of the Development Plan, as amended, in violation of the provisions of paragraph 20 hereof and shall make available to the Director of Finance of the City, upon request, such information as it has available or is able to obtain to support and prove such statement.

22. That in the event of any conflict between the paragraphs 20 and 21 hereof and Section XIX of the Development Plan of West Side, as amended, or any other provisions of the Development Plan, as amended, or this Contract, the provisions of paragraphs 20 and 21 shall be deemed to control.

23. That the lease referred to in Section XIV of the Development Plan, as amended, shall provide that the lessee thereunder will pay, as additional rent to West Side, within one hundred twenty (120) days after the termination of the tax relief period pro-

vided in paragraph 9 hereof, all the net earnings of the lessee derived from the project during such tax relief period in excess of 8% per annum of the cost of the project to the lessee under the Development Plan of West Side, as amended. Such net earnings shall be computed after deducting from gross earnings:

(a) all costs and expenses of maintenance and operation, except management fees or charges in excess of such fees and charges normally rendered for such services by Hilton Hotels Corporation or any other person, partnership, corporation or other entity performing similar services for the project;

(b) all amounts paid for taxes, assessments, insurance premiums and other similar charges;

(c) an annual amount sufficient to amortize the lessee's cost of the entire project at the end of the period, which shall not be less than 20 nor more than 60 years from the date of completion of the project;

(d) any deficiency in such rate of return for any other year or years in such 25-year tax relief period, which deficiency was not offset against excess earnings in any other year during such 25-year period; and

(e) any surplus earnings in excess of the rate provided for above which surplus earnings have been used to accelerate amortization payments or for the enlargement of the project.

Any such additional rent paid to West Side shall be deemed to have been earned by West Side during the tax relief period provided in paragraph 9 hereof. Said lease shall

further provide, that the lessee thereunder shall deliver to West Side, in duplicate, within one hundred twenty (120) days after the end of said tax relief period, a financial report for the entire tax relief period and financial reports for each fiscal year during the tax relief period, prepared by an independent certified public accountant in a form reasonably acceptable to the Director of Finance. Said financial report for the entire tax relief period shall disclose the net earnings of the lessee from the project described herein and the disposition of any net earnings in excess of those provided for herein. If West Side shall fail, neglect or refuse to enforce the aforesaid lease provisions, after written request by the City to do so, the City shall have the right to enforce the aforesaid lease provisions, said provisions being for the protection and benefit of the City. West Side shall file one copy of said reports with the Director of Finance within fifteen (15) days after receipt thereof. Such lease shall also provide (i) that the lessee thereunder shall not enter into any sublease of the project, or any portion thereof, which is not bona fide and negotiated at arms-length, provided, however, that said lessee may enter into a management agreement for the operation of the project with Hilton Hotels Corporation, a Delaware corporation, or any other person, partnership, corporation or other business entity, provided that the fees or other charges payable thereunder do not exceeed the feees and charges normally rendered for such services by Hilton Hotels Corporation or any other person, partnership, corporation or other entity performing similar services for the project, and (ii) that the provisions and restrictions contained therein shall be binding upon any assignee of the lessee deriving net earnings from the project.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written."

Kansas City, Missouri

By .....
Director of Finance

ATTEST:

.....
City Clerk

Approved as to form and legality:

.....
Associate City Counselor

West Side Redevelopment Corporation

By .....
President

ATTEST:

.....
Secretary

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19[illegible]

No. [illegible] 150

ANNBAR ASSOCIATES, a Co-Partnership, CONTINENTAL BUILDING & OPERATING CO., INC., a Corporation,

Appellants,

vs.

WEST SIDE REDEVELOPMENT CORPORATION, a Corporation, CITY OF KANSAS CITY, MISSOURI, a Municipal Corporation, and NORMAN H. ANDERSON, Attorney General, State of Missouri,

Appellees.

MOTION TO DISMISS OR AFFIRM

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. .....

ANNBAR ASSOCIATES, a Co-Partnership, CONTINENTAL BUILDING & OPERATING CO., INC., a Corporation,
Appellants,

vs.

WEST SIDE REDEVELOPMENT CORPORATION, a Corporation, CITY OF KANSAS CITY, MISSOURI, a Municipal Corporation, and NORMAN H. ANDERSON, Attorney General, State of Missouri,
Appellees.

MOTION TO DISMISS OR AFFIRM

Appellees, West Side Redevelopment Corporation and City of Kansas City, Missouri, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the appeal be dismissed on the grounds that it does not present a substantial federal question and that the judgment of the Supreme Court of Missouri rests on an adequate non-federal basis, or in the alternative, that the final judgment and decree of the Supreme Court of Missouri be affirmed on the ground that the questions presented are so unsubstantial as not to need further argument.

OPINIONS BELOW

The opinion of the Circuit Court of Jackson County, Missouri, at Kansas City, Division No. 5 (Appendix B to Appellants' Jurisdictional Statement) is not officially reported. The opinion of the Supreme Court of Missouri, *en banc*, is reported at 397 S.W.2d 635 (Appendix A to Appellants' Jurisdictional Statement).

STATUTES INVOLVED

The statutes involved in the appeal are set forth in Appendices C, D and E to Appellants' Jurisdictional Statement.

QUESTIONS PRESENTED

1. Do Chapter 353, R.S.Mo. (1959) and Chapter 61, Revised Ordinances of Kansas City, Missouri, 1956, as amended, in the abstract and without reference to the facts involved in this appeal, permit an urban redevelopment corporation to acquire real property by the exercise of eminent domain without requiring the achievement of a public purpose or benefit?

   A. In determining whether Chapter 353, R.S.Mo. (1959), and Chapter 61, Revised Ordinances of Kansas City, Missouri, 1956, as amended, permit West Side Redevelopment Corporation, an urban redevelopment corporation, to acquire certain real property by the exercise of eminent domain without requiring the achievement of a public purpose or benefit, can the actual facts involved in this case, including the provisions of Commit-

tee Substitute for Ordinance No. 29352 and the development plan approved thereby and required by said Chapter 353 and said Chapter 61, properly be considered?

B. Did the Supreme Court of Missouri properly construe the Constitution of the State of Missouri of 1945, Chapter 353, R.S.Mo. (1959), and Chapter 61, Revised Ordinances of Kansas City, Missouri, as amended, as assuring the accomplishment of the public purpose of blight clearance and as requiring a subsequent ordinance, such as Committee Substitute for Ordinance No. 29352 passed by Kansas City, Missouri (Appendix E to Appellants' Jurisdictional Statement), to express the details and specific provisions, conditions and restrictions necessary to effect the overall public purpose with respect to a particular redevelopment project?

2. Do Chapter 353, R.S.Mo. (1959), and Chapter 61, Revised Ordinances of Kansas City, Missouri, 1956, as amended, violate the equal protection clause of the 14th Amendment to the Constitution of the United States by failing to provide a legislative procedure to determine, after a public purpose has been accomplished (*i.e.*, the clearance of blight and completion of the redevelopment project), whether existing restrictions may be abandoned or further restrictions are required?

3. Did the Supreme Court of Missouri properly interpret and construe Chapter 61, Revised Ordinances of Kansas City, Missouri, 1956, as amended, and Committee Substitute for Ordinance No. 29352, in holding that such legislation does not permit an evasion of the tax relief requirements of Chapter 353, R.S.Mo. (1959), and of the Constitution of the State of Missouri of 1945?

4. Does paragraph 23 of the Second Supplemental Contract approved by, and made a part of, Committee Substitute for Ordinance No. 29352 relieve the lessee of the redevelopment project from liability to account for excess earnings to an assignee of West Side Redevelopment Corporation and, if so, does this amount to an unconstitutional evasion of the net earnings restrictions of Chapter 353, R.S. Mo., and Chapter 61, Revised Ordinances of Kansas City, Missouri, 1956?

JURISDICTION

The basis for jurisdiction asserted by appellants is set forth in their Jurisdictional Statement.

STATEMENT

Appellants filed a declaratory judgment action in the Circuit Court of Jackson County, Missouri, at Kansas City, alleging the unconstitutionality of Chapter 353, R.S.Mo. (1959) ("The Urban Redevelopment Corporations Law"). Chapter 61, Revised Ordinances of Kansas City, Missouri, 1956, as amended ("The Urban Redevelopment Ordinance") and Committee Substitute for Ordinance No. 29352 passed by the City Council of Kansas City, Missouri, on November 15, 1963, and authenticated as so passed ("Sub. Ord. 29352"). The Circuit Court of Jackson County, Missouri, at Kansas City, entered judgment against the appellants on August 24, 1964, and denied all relief sought by them. This is an appeal from a final judgment entered in this case on December 13, 1965, by the Supreme Court of Missouri, *en banc*, sustaining the action of the trial court and denying all relief sought by the appellants.

West Side Redevelopment Corporation (hereinafter called "West Side"), pursuant to The Urban Redevelop-

ment Corporations Law of the State of Missouri [Chapter 353, R.S.Mo. (1959)] and The Urban Redevelopment Ordinance (Chapter 61, Revised Ordinances of Kansas City, Missouri, 1956, as amended) (said Chapters 353 and 61 hereinafter collectively called the "Missouri Urban Redevelopment Laws"), submitted a development plan for the redevelopment of an area in downtown Kansas City, Missouri. The development plan submitted by West Side, after public hearings before the City Plan Commission and Finance Committee of the City Council of Kansas City, Missouri, was approved by the City Council of Kansas City by Sub. Ord. 29352. The Missouri Urban Redevelopment Laws, Sub. Ord. 29352, and the development plan impose certain restrictions upon West Side and require that the blight in the approved project area be cleared and the redevelopment completed in all events. Sub. Ord. 29352 granted to West Side, a corporation existing and organized pursuant to The Urban Redevelopment Corporations Law, the power to acquire certain real property in the project area by the exercise of eminent domain and granted partial tax relief to the real property in the project area. The partial tax relief continues only so long as the real property is used in accordance with conditions and restrictions set forth in the development plan approved by Sub. Ord. 29352. The specific conditions and restrictions are set forth in detail in the opinion of the Supreme Court of Missouri (Appellants' Appendix A, pp. A 5-7).

The appellants in this action are Annbar Associates, the owner of a hotel located in Kansas City, Missouri, and Continental Building & Operating Co., Inc., the lessee of a hotel located in Kansas City, Missouri. The appellants herein, the plaintiffs in the trial court, instituted this action as taxpayers in Kansas City, Missouri, and as the owner and the lessee of hotels alleged to be in competi-

tion with a hotel complex proposed to be constructed by the appellee, West Side, pursuant to the development plan approved by Sub. Ord. 29352. Irene Tomlinson, a person owning land in the redevelopment project area, intervened in this action in the trial court as a plaintiff and appealed to the Supreme Court of Missouri from the adverse decision in the trial court. Sub. Ord. 29352 authorized West Side to acquire Tomlinson's property by the exercise of eminent domain. Tomlinson has not appealed from the decision of the Supreme Court of Missouri.

The Missouri Urban Redevelopment Laws, and specifically the provisions thereof granting the power of eminent domain and the partial tax relief, were enacted by the State of Missouri and the City of Kansas City, Missouri, pursuant to specific provisions contained in the Constitution of the State of Missouri of 1945. Article VI, Section 21, of the Missouri Constitution, provides:

> "Section 21. Laws may be enacted, and any city or county operating under a constitutional charter may enact ordinances, providing for the clearance, replanning, reconstruction, redevelopment and rehabilitation of blighted, substandard or insanitary areas, and for recreational and other facilities incidental or appurtenant thereto, and for taking or permitting the taking, by eminent domain, of property for such purposes, and when so taken the fee simple title to the property shall vest in the owner, who may sell or otherwise dispose of the property subject to such restrictions as may be deemed in the public interest."

And, Article X, Section 7, of the Missouri Constitution, states as follows with respect to partial tax relief:

> "Section 7. For the purpose of encouraging forestry when lands are devoted exclusively to such purpose, and the reconstruction, redevelopment and re-

habilitation of obsolete, decadent or blighted areas, the general assembly by general law, may provide for such partial relief from taxation of the lands devoted to any such purpose, and of the improvements thereon, by such method or methods, for such period or periods of time, not exceeding twenty-five years in any instance, and upon such terms, conditions, and restrictions as it may prescribe."

The appellants do not contend that the foregoing provisions of the Missouri Constitution are contrary to the Constitution of the United States. Rather, they allege that the Missouri Urban Redevelopment Laws and Sub. Ord. 29352 violate the equal protection clauses of the Constitutions of the State of Missouri and of the United States *because a public purpose is not required to be satisfied or accomplished.* These contentions have been denied both by the trial court and by the Supreme Court of Missouri, *en banc.*

ARGUMENT

The decision of the Supreme Court of Missouri, *en banc,* is correct and appellees' motion should be granted. The issues raised by appellants, as stated in their "Questions Presented", are a frivolous attempt to obtain further delay and to seek review by the United States Supreme Court of hypothetical questions and of the interpretations by the Supreme Court of Missouri of the Missouri Urban Redevelopment Laws and of Sub. Ord. 29352.

This Court cannot and will not render advisory opinions or decide hypothetical questions. Mr. Justice Brennan succinctly stated the rule in *United States* v. *Raines,* 362 U.S. 17, 4 L. Ed. 2d 524, 80 S. Ct. 519 (1960), in the following language (362 U.S. at 21-22):

> "* * * This Court, as is the case with all federal courts, 'has no jurisdiction to pronounce any statute, either of a State or of the United States, void, because irreconcilable with the Constitution, except as it is called upon to adjudge the legal rights of litigants in actual controversies. * * *' *Kindred to these rules is the rule that one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional.* (Citing 13 authorities) In Barrows v. Jackson, 346 U.S. 249, 97 L. Ed. 1586, 73 S. Ct. 1031, this Court developed various reasons for this rule. *Very significant is the incontrovertible proposition that it 'would indeed be undesirable for this Court to consider every conceivable situation which might possibly arise in the application of complex and comprehensive legislation.'* Id. 346 U.S. at 246. The delicate power of pronouncing an Act of Congress unconstitutional is not to be exercised with reference to hypothetical cases thus imagined." (Emphasis supplied).

The four "Questions Presented" by appellants actually serve to raise only one issue—whether the Missouri Urban Redevelopment Laws and Sub. Ord. 29352, in granting the right of eminent domain or partial tax relief, violate the equal protection clause of the 14th Amendment to the Constitution of the United States because they do not require that a public purpose or benefit be achieved. Appellants, on the one hand, contend that this legislation violates the equal protection clause. Yet, on the other hand, appellants readily concede that urban redevelopment and slum clearance are public uses which constitutionally justify legislation granting eminent domain and partial tax relief. It is appropriate to set out in full appellants' concession (Appellants' Jurisdictional Statement, p. 6):

"* * * At the outset it should be noted that appellants do not question the now generally accepted principle that urban redevelopment and slum clearance are public uses justifying the exercise of the power of eminent domain and the granting of tax relief. * * *"

The Appellants then concede, in the following language, that they simply seek a review of the "means" adopted by the Missouri legislative authorities to carry out the admittedly public purpose of urban redevelopment (Appellants' Argument, p. 18):

"The single fundamental issue raised in this appeal is: What *legislative restrictions* are necessary to assure that a private entity which acquires land by eminent domain *for the public purpose of urban redevelopment,* will devote such land to that public purpose. * * *" (Emphasis ours).

This Court already has held that it does not have jurisdiction to review the legislative "means" of attaining a public purpose. In *Berman* v. *Parker,* 348 U.S. 26, 99 L. Ed. 27, 75 S. Ct. 98 (1954), Mr. Justice Douglas, speaking for the Court in a decision reviewing the District of Columbia Redevelopment Act of 1945, stated (348 U.S. at 33):

"Once the object is within the authority of Congress, the right to realize it through the exercise of eminent domain is clear. For the power of eminent domain is merely the means to the end. See Luxton v. North River Bridge Co., 153 U.S. 525, 529, 530, 38 L. Ed. 808, 810, 14 S. Ct. 891; United States v. Gettysburg Electric R. Co., 160 U.S. 668, 679, 40 L. Ed. 576, 580, 16 S. Ct. 427. Once the object is within the authority of Congress, *the means by which it will be attained is also for Congress to determine.* * * *" (Emphasis ours).

The legislative means or restrictions are a matter of political concern, not judicial. Such legislative or political questions are not subject to review by this Court. *Rindge Co.* v. *Los Angeles County,* 262 U.S. 700, 67 L. Ed. 1186, 43 S. Ct. 689 (1923); *Joslin Mfg. Co.* v. *Providence,* 262 U.S. 668, 67 L. Ed. 1167, 43 S. Ct. 684 (1923); *Bragg* v. *Weaver,* 251 U.S. 57, 64 L. Ed. 135, 40 S. Ct. 62 (1919).

The Supreme Court of Missouri, commenting upon the "legislative" means or restrictions, said (Appellants' Appendix A, pp. A27-28):

> "On pages 640 to 641, inclusive, of this opinion we related in detail the several sections of the Redevelopment Ordinance which impose the general conditions, restrictions and controls adopted by the city to assure accomplishment of the public purpose. It is doubtful whether the city could have prescribed more specific or definite restrictions in advance of each project.
>
> * * *
>
> "* * * The means and method of restriction and assurance of accomplishment of the public purpose is for determination by the authorized legislative body, and that determination, whether wise or unwise, cannot be affected by the courts unless it appears upon allegation and clear proof that the legislative determination was arbitrary or was induced by fraud, collusion or bad faith. * * *"

It should be emphasized that appellants do not argue or contend that the equal protection clause requires the Missouri Urban Redevelopment Laws to impose conditions and restrictions beyond the clearance of blight and completion of the project, but rather they contend that there is no legislative machinery established to determine "* * * at the time of such abandonment (of the restrictions of Sub. Ord. 29352) that no further restrictions are deemed necessary in the public interest." (Appellants' Jurisdictional

Statement, p. 23) This issue is not a constitutional or judicial issue, but rather a question of legislative wisdom. This Court consistently has refused to review issues involving legislative discretion.

The "Questions Presented" are not substantial in that they present issues already specifically decided by the United States Supreme Court. In *Berman* v. *Parker, supra,* the Supreme Court examined the issue of whether urban redevelopment legislation served a public purpose so as to satisfy the constitutional requirements authorizing the taking of private property by eminent domain. The Court opined (348 U.S. at 32-33):

> "Public safety, public health, morality, peace and quiet, law and order—these are some of the more conspicuous examples of the traditional application of the police power to municipal affairs. Yet they merely illustrate the scope of the power and do not delimit it. See Noble State Bank v. Haskell, 219 U.S. 104, 111, 55 L. Ed. 112, 116, 31 S. Ct. 186, 32 LRANS 1062, Ann. Cas. 1912A 487. Miserable and disreputable housing conditions may do more than spread disease and crime and immorality. They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make an almost insufferable burden. They may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river.
>
> "We do not sit to determine whether a particular housing project is or is not desirable. The concept of the public welfare is broad and inclusive. * * *. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well

> as clean, well-balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them. If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way."

And, in determining whether a public use exists, this Court always has given great weight to the findings of the state legislature and state judiciary. For example, in *Milheim* v. *Moffat Tunnel Improvement District*, 262 U.S. 710, 67 L. Ed. 1194, 43 S. Ct. 694 (1923), the Court said (262 U.S. at 717):

> "Public purpose. The nature of a use, whether public or private, is ultimately a judicial question. However, the determination of this question is influenced by local conditions; and this court, while enforcing the 14th Amendment, should keep in view the diversity of such conditions and regard with great respect the judgments of state courts upon what should be deemed public uses in any state. Rindge Co. v. Los Angeles County, decided today, and cases therein cited. And like respect should be accorded to the declarations of the legislative body of the state. Fallbrook Irrig. Dist. v. Bradley, 164 U.S. 112, 160, 41 L. Ed. 369, 389, 17 Sup. Ct. Rep. 56. Here the legislature, familiar with the local conditions, has declared that the construction of the tunnel will benefit the people of the state; and both the local court of the state and its supreme court have held its construction to be for a public purpose."

The state supreme courts in forty-five states have sustained the constitutionality of urban redevelopment legislation under the various state constitutions and under the equal protection clause of the 14th Amendment to the

Constitution of the United States upon the ground that the clearance of blight and redevelopment of the blighted area serve a public purpose. 44 A.L.R.2d 1414; Comment, 49 Fordham L. Rev. 777 (1961). Appellants, by their own admissions, do not question the constitutional validity of those decisions.

Appellants assert that the "Questions Presented" are of "national importance" because of the universality among the states of urban redevelopment laws. (Appellants' Jurisdictional Statement, p. 22) Then, appellants promptly endeavor to negate their own argument by attempting to distinguish the admittedly constitutional urban redevelopment laws of forty-four other states and by classifying the Missouri Urban Redevelopment Laws as "unique" (Appellants' Jurisdictional Statement, p. 27). Appellants' categorization of the Missouri Urban Redevelopment Law as "unique" is based upon a complete and sweeping disregard of the fact that the Supreme Court of Missouri, *en banc,* held that the Missouri Urban Redevelopment Laws require that West Side, its successors and assigns, clear the blight and complete the redevelopment project and that the partial tax relief granted to the land continues only so long as the property is used subject to the conditions and restrictions of the development plan approved by Sub. Ord. 29352 (Appellants' Appendix A, p. A28). Such requirements are not "unique", but are consistent with the urban redevelopment legislation throughout the United States. The cases cited by appellants in their Jurisdictional Statement clearly support the constitutionality of the Missouri Urban Redevelopment Laws.

Finally, it is apparent that appellants, in stating the "Questions Presented" and the facts, pose hypothetical questions and blindly ignore the construction given by the Supreme Court of Missouri to *state* statutes enacted

pursuant to, and construed under, express provisions of the *state* constitution. The United States Supreme Court has consistently declared that it is bound by a state's interpretation of its own statutes. Typical of the expression of this rule is the following statement in *Aero Mayflower Transit Co.* v. *Board of Railroad Commissions of the State of Montana,* 332 U.S. 495, 92 L. Ed. 99, 68 S. Ct. 167 (1947) (332 U.S. at 499-500):

> "We put aside at the start appellant's suggestion that the Supreme Court of Montana has misconstrued the state statutes and therefore that we should consider them, for purposes of our limited function, according to appellant's view of their literal import. The rule is too well settled to permit of question that this Court not only accepts but is bound by the construction given to state statutes by the state courts. * * *"

More recently, Mr. Justice Brennan clearly stated the principle in the following language in the case of *Speiser* v. *Randall,* 357 U.S. 513, 2 L. Ed. 2d 1460, 78 S. Ct. 1332 (1958) (357 U.S. at 523):

> "* * * A more fundamental objection to the suggestion, of course, is that it does violence to the basic constitutional principle that the construction of state laws is the exclusive responsibility of the state courts."

The above argument summarizes the merits of appellees' position. However, each of the issues presented by appellants' four "Questions Presented" is examined in further detail with reference to the foregoing authorities.

1.

Appellants' Question No. 1

Appellants, by their Questions No. 1 and No. 1 A, seek a determination whether, by ignoring Sub. Ord. 29352, the development plan approved thereby and the other facts

involved in this controversy, the Missouri Urban Redevelopment Laws could be held to violate the equal protection clause of the 14th Amendment to the Constitution of the United States. The question is clearly hypothetical and seeks an advisory opinion in violation of the doctrine stated in *United States* v. *Raines, supra.*

Appellants' Question No. 1 B poses the issue of whether the construction by the Supreme Court of Missouri, under the Missouri Constitution of 1945 of statutes and ordinances is correct. Appellants represent to this Court, as a "fact" that Section 353.150 (4) of The Urban Redevelopment Corporations Law and Section 61.230 (c) of the Urban Redevelopment Ordinance "* * * permit a redevelopment corporation to acquire property by exercising the power of eminent domain and to sell said property immediately, free from all restrictions." (Appellants' Jurisdictional Statement, pp. 5-8) The Supreme Court of Missouri, interpreting the Missouri statutes involved under the Missouri Constitution, made a determination exactly contrary to appellants' statement of "fact". It said (Appellants' Appendix A, p. A26):

> "Sections 353.150, subd. 4 and 61.230 (c) do permit sale of real property acquired by the redevelopment corporation for a redevelopment project. But we must consider the whole of the Redevelopment Ordinance in determining whether safeguards or restrictions have been provided to assure that a public purpose will be served. In that connection we may consider the provisions of Sub. Ord. 29352. In subpoint A of their first point, appellants contend that Sub. Ord. 29352 may not supply the restrictions they say are necessary in the enabling laws to meet constitutional requirements. We do not disagree with the cases they cite on this proposition; they merely are not applicable here. *It is apparent that in considering the type of legislation necessary to effect the*

purpose of Article VI, § 21, in a city the size of Kansas City where several redevelopment projects of varying sizes in different locations under varying conditions and having different utility purposes are contemplated, the city council, as the legislative body of the city, would adopt in the first instance an ordinance in general language establishing the policy and fixing general standards that would fit the overall purpose. It would, and did, leave to subsequent ordinances the expression of the details and specific provisions, conditions and restrictions necessary to apply the policy and standards to a particular redevelopment project. The design of the Redevelopment Ordinance contemplates that supplemental action by ordinance would be necessary for each project to effect the overall purpose. For these reasons we may, and should consider the provisions of Sub. Ord. 29352.

"On pages 640 to 641, inclusive, of this opinion we related in detail the several sections of the Redevelopment Ordinance which impose the general conditions, restrictions and controls adopted by the city to assure accomplishment of the public purpose. It is doubtful whether the city could have prescribed more specific or definite restrictions in advance of each project." (Emphasis ours).

Thus, the issue raised was decided by the Supreme Court of Missouri under the Missouri Constitution on an adequate non-federal basis, *i.e.*, Article VI, Section 21, of the Missouri Constitution. In *Jankovich* v. *Indiana Toll Road Comm.*, 379 U.S. 487, 13 L. Ed. 2d 439, 85 S. Ct. 493 (1965), this Court said (l.c. 379 U.S. at 491-492):

"In such circumstances, even though a state court's opinion relies on similar provisions in both the State and Federal constitutions, the state constitutional provision has been held to provide an independent and adequate ground of decision depriving this Court of jurisdiction to review the state judgment. New York

City v. Central Savings Bank, 306 U.S. 661, 83 L. Ed. 1058, 59 S. Ct. 790, explained in Minnesota v. National Tea Co., 309 U.S. 551, 556-557, 84 L. Ed. 920, 923, 60 S. Ct. 676; Lynch v. New York ex rel. Pierson, 293 U.S. 52, 79 L. Ed. 191, 55 S. Ct. 16. * * *"

The Supreme Court of Missouri has determined that Sub. Ord. 29352 "* * * requires that West Side, its successors and assigns, complete clearance of blight from the area and construction of the improvements." (p. A28, Appellants' Appendix A), and held that, under both the Missouri Constitution and laws, the public purpose necessarily must be served, the means and methods and assurance of accomplishment with respect to each individual project being matters for determination by the authorized legislative body.

2.

Appellants' Question No. 2

The second question certified by appellants clearly demonstrates the hypothetical nature of Question No. 1, in that it assumes that the Missouri Urban Redevelopment Laws and Sub. Ord. 29352 require the elimination of blight and completion of the redevelopment project, but questions the constitutionality of said Missouri Urban Redevelopment Laws in that they do not provide for a mechanism or procedure to determine whether or not an abandonment of restrictions, after the public purpose has been accomplished, is in the public interest. The nature of the question itself concedes that restrictions need not, by constitutional necessity, continue after completion of the redevelopment. The substance of this question relates solely to the proper time for, or mechanics of, a legislative determination, *i.e.*, whether the determination as to the necessity, extent and nature of continuing restric-

tions after completion of the project, the legislative bodies of the State of Missouri and the City of Kansas City, Missouri, should establish a procedure whereby such determination could be made only after the clearance of the blight and completion of the project.

A fortiori, the arguments stated in response to Question No. 1 apply to Question No. 2. In addition, the Supreme Court of Missouri has determined that, under the Constitution of Missouri, Article VI, Section 21, after the clearance of blight no further restrictions are required. The Court said (Appellants' Appendix A, pp. A17, A25-26):

> "'The very fact that Article VI, § 21, is silent as to the use to which the land may be put after it is cleared of its blighted and insanitary condition and sold, "'*subject to such restrictions as may be deemed in the public interest.*'" (Emphasis ours), conveys, we think, the definite assumption that the primary object and public purpose of the law shall be the clearance and correction of any duly declared blighted and insanitary condition, and that thereafter the area may be sold with or without restrictions to a private enterprise, as may be deemed by Authority to be in the public interest.
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> • • •
>
> "What restrictions are required by Article VI, § 21, to be imposed when property taken is sold? And who may impose such restrictions? That section provides that property acquired by eminent domain for the above purposes may be sold '*subject to such restrictions as may be deemed in the public interest.*' (Emphasis supplied.) The mandate of the constitution is not that restrictions be imposed; the mandate is that either of the legislative bodies mentioned impose *such* restrictions as that body *may* deem in the public interest. That is: the legislative branch may deem it in the public interest and the property be sold subject to no restrictions. In the Kansas City Land Clear-

> ance case, supra, we also said at l.c. 51, that after the public purpose is served '* * * the area may be sold with or without restrictions to a private enterprise, as may be deemed by Authority to be in the public interest', and at l.c. 57 that '* * * if the Authority deems it in the public interest, such property may be sold without restriction.' In that case the body empowered to determine whether the public interest required that restrictions be imposed and, if so, what restrictions, was the Authority, as a public body, corporate and politic; in this case the body empowered to make that determination is the city through its legislative body, the city council."

As in the case of appellants' Question No. 1, the judgment of the Supreme Court of Missouri rests on a non-federal basis.

3.

Appellants' Question No. 3

Question No. 3 is presented by appellants on the premise that the Urban Redevelopment Ordinance and Sub. Ord. 29352 are contrary to the provisions of The Urban Redevelopment Corporations Law in that they automatically grant tax relief to any purchaser of the redevelopment property. Again, appellants mislead this Court by stating as a "fact" that The Urban Redevelopment Ordinance and Sub. Ord. 29352 are "* * * contrary to the express provision of Section 353.110 * * * limiting the granting of tax relief to an urban redevelopment corporation * * *" (Jurisdictional Statement, p. 13). The Supreme Court of Missouri, *en banc*, expressly interpreted said Section 353.110 and held that The Urban Redevelopment Ordinance and Sub. Ord. 29352 are consistent with and clearly authorized by said Section 353.110 and by Article X, Section 7, of the Constitution of Missouri, and

that Section 353.110 does not limit tax relief to urban redevelopment corporations. The Court said (Appellants' Appendix A, pp. A32-34):

> "* * * They also say that in automatically granting tax relief to *any* purchaser, this ordinance attempts to bind a future council and relieve it of its discretion to refuse tax relief to a purchaser from West Side. The ordinance *does* provide that the tax relief granted real property of West Side under the Redevelopment Law and Ordinance shall inure to a purchaser, meaning *any* purchaser. But that is not to say that the granting of such relief is in violation of the constitutional provisions referred to. *Appellants contend that § 353.110 limits tax relief solely to urban redevelopment corporations. However, on this point, they ignore § 353.150, subd. 4. Section 353.110 provides for partial relief from taxation* of the real property of an urban redevelopment corporation 'so long as [it] is owned by an urban redevelopment corporation and used in accordance with an authorized development plan * * *.' *The Redevelopment Law, in § 353.150, subd. 4, recognizes and contemplates that property of a redevelopment corporation may be sold, and that the purchaser may be one other than a redevelopment corporation. That section authorizes partial tax relief on the land acquired by such purchaser under certain circumstances;* it provides that if '* * * the purchaser of such real property of such redevelopment corporation shall continue to use, operate and maintain such real property in accordance with the provisions of any development plan, the legislative authority of any city affected by the provisions of this chapter may grant the partial tax relief provided in section 353.110; * * *.' *By § 353.150, subd. 4, the legislature has provided that partial tax relief may inure to a person other than an urban redevelopment corporation, and the public purpose of the law is encouraged by further providing that this relief may continue only so long as the property is used in ac-*

> *cordance with the development plan.* Article X, § 7, of the constitution expressly authorizes the general assembly to provide for partial relief from taxation of lands devoted to the purpose of rehabilitation of blighted areas by such method and upon such terms and conditions as it may prescribe. That section provides partial tax relief for the lands as distinguished from relief to a particular owner of the land; it does not prescribe the class of persons owning the land to whom the relief may inure. * * *" (Emphasis ours).

Obviously, Question No. 3 merely requests review by the United States Supreme Court of the interpretation given by the Supreme Court of Missouri of a statute of its own state. The question has also been certified upon the basis of an interpretation of The Urban Redevelopment Corporations Law urged by appellants that was specifically rejected by the Supreme Court of Missouri. Any review of this question would be contrary to the principles stated in *Aero Mayflower Transit Co.* v. *Board of Railroad Commissions of the State of Montana, supra,* and *Speiser* v. *Randall, supra.*

In addition, the Supreme Court of Missouri, *en banc,* in deciding the issue raised by appellants' Question No. 3, relied upon the Constitution of Missouri, and not the equal protection clause of the 14th Amendment to the Constitution of the United States. The Court said (Appellants' Appendix A, pp. A 33-34):

> "* * * Article X, § 7, of the constitution expressly authorizes the general assembly to provide for partial relief from taxation of lands devoted to the purpose of rehabilitation of blighted areas by such method and upon such terms and conditions as it may prescribe. *That section provides partial tax relief for the lands as distinguished from relief to a particular owner of the land;* it does not prescribe the class of persons

> owning the land to whom the relief may inure. That section empowers the general assembly to prescribe the method, terms and conditions under which that relief may be enjoyed, which includes the power to provide that partial tax relief shall inure to the benefit of a private urban redevelopment corporation *and* any purchaser from it, so long as that purchaser continues to use the land for what has been determined to be a public purpose. In Land Clearance for Redevelopment Authority of City of St. Louis v. City of St. Louis, supra, 270 S.W.2d l.c. 64-65, the constitutionality of § 353.110 was challenged as granting a tax exemption to a private urban redevelopment corporation. We held that the provisions of § 353.110 were expressly authorized by Article X, § 7, and did not conflict with Article X, § 6." (Emphasis ours).

Thus, the Supreme Court of Missouri has interpreted the Constitution of Missouri to mean that the partial tax relief is granted to and inures to the benefit of the "lands", and is not granted "to any purchaser" or any other particular owner. Appellants seek to obtain a reversal by this Court of an interpretation by the Supreme Court of Missouri of the Missouri Constitution. Jurisdiction does not rest with the United States Supreme Court to either revise the state court's interpretation of a statute of its own state or to review a decision based upon the adequate non-federal basis of the state's own constitution. *Jankovich* v. *Indiana Toll Road Comm., supra; Aero Mayflower Transit Co.* v. *Board of Railroad Commissioners of the State of Montana, supra; Speiser* v. *Randall, supra.*

4.

Appellants' Question No. 4

Appellants seek by Question No. 4 to obtain a determination whether Paragraph 23 of the Second Supplemental Contract, which is a part of Sub. Ord. 29352, is

sufficient to limit the earnings, particularly those of a lessee from West Side, to 8% of the cost of the project. Appellants assert West Side may be dissolved or assign its interest and that the provisions of Paragraph 23 of the Second Supplemental Contract could not be enforced against the lessee of the project by a "successor or assign" of West Side and the lessee thereby will be permitted to avoid the limitation upon its earnings. This fallacious and contrived argument is not based upon any violation of the Constitution of the United States, but is simply frivolous, ignores the intent and express provisions of said paragraph 23 (including the provision that Kansas City, Missouri, shall have the right to enforce the payment of excess net earnings by the lessee) and is made to obtain an interpretation in this Court of the Second Supplemental Contract. Appellants raise the issue of the novel interpretation and application of Paragraph 23 and the Second Supplemental Contract for the first time in this Court.

In an endeavor to find some basis upon which to inject this hypothetical question, appellants, in the Jurisdictional Statement (p. A36), rely on a quotation from the opinion of the Supreme Court of Missouri at page A36 of Appellants' Appendix A, holding that the fact that partial *tax relief* indirectly may inure to a lessee does not violate the Constitution. This does not decide, or even have any reference whatever to, the hypothetical issue now urged by appellants for the first time of whether Paragraph 23 of the Second Supplemental Contract inures to the benefit of a "successor and assign" of West Side, and that the omission of the term "successor and assign" in that paragraph opens an avenue for evasion of the net earnings limitation. The Supreme Court of Missouri, however, did hold that sufficient restrictions and conditions

to avoid unlawful evasion were contained in Sub. Ord. 29352. The Court said (Appellants' Appendix A, pp. A28-29):

> "* * * This ordinance requires that the 8% earnings restriction be applicable to both West Side and its lessee. It also requires that West Side, its successors and assigns, complete clearance of blight from the area and construction of the improvements. The city council has thus, by legislative determination, adopted this *means* of restricting the earnings of West Side and its lessee, and assuring accomplishment of the primary object and public purpose of the law. * * *
>
> "* * * Sub. Ord. 29352 does not permit evasion of the earnings restriction but on the contrary endeavors to assure, and we think assures as far as possible, that the restriction will not be evaded by providing that the management operator shall not be paid in excess of the normal fee charged in the hotel industry."

The question of whether Paragraph 23 of the Supplemental Contract can be enforced against the lessee of the project by West Side's successors and assigns is obviously a question of interpretation of a state statute and the judgment of the state court must be followed. *Speiser* v. *Randall, supra.*

CONCLUSION

We respectfully submit, therefore, that appellants present no substantial question for the decision of this Court, and that the judgment of the Supreme Court of Missouri rests on an adequate non-federal basis. Therefore, appellees' motion to dismiss or affirm should be granted.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 152

ANNBAR ASSOCIATES, a Co-Partnership, CONTINENTAL BUILDING & OPERATING CO., INC., a Corporation,
Appellants,

vs.

WEST SIDE REDEVELOPMENT CORPORATION, a Corporation, CITY OF KANSAS CITY, MISSOURI, a Municipal Corporation, and NORMAN H. ANDERSON, Attorney General, State of Missouri,
Appellees.

APPELLANTS' BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

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ANNBAR ASSOCIATES, a Co-Partnership, CONTINENTAL BUILDING & OPERATING CO., INC., a Corporation,
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Appellees.

APPELLANTS' BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

Appellees' Motion to Dismiss or Affirm is based upon a misunderstanding of the four questions set forth in appellants' Jurisdictional Statement, a misstatement of the pertinent facts and a misconception of the applicable law. Turning first to the questions in the Jurisdictional Statement:

1. Appellants ask in Question No. 1 whether the redevelopment statute of the State of Missouri and the redevelopment ordinance of the City of Kansas City, Missouri, being unconstitutional on their face, can be cured, and are they in fact cured by a special ordinance of said City approving a contract between said City and a private corporation (J.S. 4)?*

Appellees say that Question No. 1 is: Did the Supreme Court of Missouri properly construe the Missouri Constitution and said statutes and ordinances (M.D. 3)?

2. Appellants ask in Question No. 2 whether the attacked statute and ordinance require achievement of a public purpose in the first instance, when they actually permit abandonment of a redevelopment plan free from all restrictions *prior* to the assurance of a lasting solution for the public benefit (J.S. 4)?

Appellees say that Question No. 2 is: Do the laws violate the Constitution if they do not provide a procedure for determining whether restrictions are required *after* a public purpose has been accomplished (M.D. 2)?

3. In Question No. 3, appellants ask in the alternative to Question No. 2, if in fact a public purpose is accomplished despite the statutory right to abandon a redevelopment plan with no further restrictions or procedure for determining restrictions simply by constructing a building, then is there not an unconstitutional discriminatory tax relief granted to a purchaser of the redevelopment property who obtains tax relief when he buys said property at a time when no public benefit remains to be served (J.S. 4, 5)?

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*For convenience, page references to the Jurisdictional Statement will be shown as (J.S. .....). Page references to Appellees' Motion to Dismiss or Affirm will be shown as (M.D. .....).

Appellees say that Question No. 3 is: Did the Supreme Court of Missouri properly interpret and construe the questioned laws, and whether said laws permit an evasion of tax relief requirements of other Missouri laws (M.D. 3)?

4. Appellees have the correct understanding of Question No. 4, but argue that it is raised for the first time in this Court (M.D. 23). Appellees are guilty of a mistake of fact. Question No. 4 asks whether the equal protection clause of the 14th Amendment of the Constitution is violated by Ordinance 29352 because a lessee is permitted to evade the earnings restriction justifying tax relief in the event the original redevelopment corporation, West Side, ceases to be the owner? On page 65 of appellants' brief filed in the Supreme Court of Missouri, after the issue was discussed on pages 61 to 65 thereof, the following paragraph is set forth:

> "The foregoing analysis, though explicit, falls short of a more express and conclusive intent to evade. In Point I of Points Relied On, we set forth those paragraphs in the Supplemental Contract which included the words 'successors or assigns'. We pointed out that in paragraphs 20 and 23 thereof, those words were deliberately omitted. The net result of that omission is that only West Side, no successor or assign, is precluded from owning an interest in, or owning all of the lessee corporation. *Further, only with West Side, no successor or assign, will lessee limit its earnings to 8% per annum.*" (Our emphasis).

Other mistakes of fact set forth in the Motion to Dismiss or Affirm should be noted.

Thus, appellees argue that appellants do not contend that the provisions of the Missouri Constitution allowing exercise of the power of eminent domain and tax relief in connection with urban redevelopment projects, are con-

trary to the Constitution of the United States (M.D. 6, 7). It is clear that if said provisions of the Missouri Constitution are construed, and they are so construed, by the Supreme Court of Missouri to sanction the laws herein attacked, obviously appellants have the same objections to said constitutional provisions.

Appellees argue that appellants do not contend that the equal protection clause requires imposition of restrictions beyond clearance of blight and completion of the construction on the project (M.D. 10). Appellants have always contended that the requirement of fulfillment of a public purpose is not satisfied by merely razing the blighted area and building a building on it (J.S. 18-25), but that it is an essential element for the fulfillment of the public purpose:

> ". . . that a redevelopment scheme should be provided calculated to prevent a recurrence of the condition. Consequently, the redevelopment of such areas after they are cleared is but one phase of a comprehensive plan designed to insure an efficient and lasting solution of the problems."
>
> *State* v. *Land Clearance for Redevelopment Authority* (Mo. Sup., 1954), 270 S.W.2d 44, 54.

> "In this way it was hoped that the cycle of decay of the area could be controlled and the birth of future slums prevented."
>
> *Berman* v. *Parker*, 348 U.S. 35, 75 S. Ct. 98, 103.

Appellees argue that appellants have disregarded the fact that the Supreme Court of Missouri held "that the Missouri urban redevelopment laws require that West Side, its successors and assigns, clear the blight and complete the redevelopment project. . . ." (M.D. 13). (In support of that statement, appellees cite page A-28, Ap-

pendix, J.S.). The reason appellants have disregarded such alleged fact is that it is not a true fact. On pages A-26 and A-27 of the Jurisdictional Statement, the Court states:

> "Sections 353.150, Subd. 4 and 61.230(c) *do permit sale of real property acquired by the redevelopment corporation* for a redevelopment project. But we must consider the whole of the Redevelopment Ordinance in determining whether safeguards or restrictions have been provided to assure that a public purpose will be served. In that connection we may consider the provisions of Sub. Ord. 29352." (Our emphasis).

Appellants recognize, as did the Supreme Court of Missouri, that the "Missouri urban redevelopment laws" do not require that West Side, its successors and assigns, clear the blight. Nor does Sub. Ord. 29352 actually impose such requirement, except in that it approves a provision in a contract between the City and West Side. It is only one provision in said contract that makes such requirement. Thus, the pertinent question is: Can that contract provision cure a fatally unconstitutional deficiency in the urban redevelopment laws; and if it can, does it?

The legal questions raised by appellees are generally stated as follows:

1. Did not the Supreme Court of Missouri decide the questions on an "adequate non-federal basis", thereby depriving this Court of jurisdiction (M.D. 16, 19, 21, 22)?

2. The questions are hypothetical (M.D. 7, 8).

3. Appellants seek a review of the "means" to carry out an admittedly public purpose (M.D. 9-12).

On the first legal question, "adequate non-federal basis", appellees cite *Jankovich* v. *Indiana Toll Road Commission* (1965), 379 U.S. 487, 85 S. Ct. 493 (M.D. 16, 19, 22).

In the *Jankovich* case, this Court held that since the Supreme Court of the State of Indiana held a state statute invalid on the grounds that said statute violated provisions of both the Indiana Constitution and the Federal Constitution, violation of the Indiana Constitution alone provided an independent and adequate ground of decision to deprive this Court of jurisdiction.

379 U.S. 489-492, 85 S. Ct. 494-496.

It is almost foolish to suggest that that case applies to the instant case in which the Supreme Court of Missouri held the questioned statutes valid and not violating either the Missouri or the Federal Constitution. If the laws violate the Federal Constitution, the Missouri Constitution cannot protect them.

The argument that the questions presented by appellants are hypothetical is never fully developed by appellees. The questions are simply called "hypothetical", and then appellees quote from *United States* v. *Raines,* 362 U.S. 17, 80 S. Ct. 519 (M.D. 7, 8). Naturally, appellants agree with the rule of law set forth in the *Raines* case. The point in the instant case is that application of the urban redevelopment statutes and ordinances herein attacked directly and adversely affect appellants. Said redevelopment laws have been acted upon adversely to appellants, who are both taxpayers claiming to be discriminated against by said laws, and competitors who are confronted with the prospect of a competitor receiving discriminatory special favor under said laws.

Appellees argue that Question No. 1 is hypothetical and seek an advisory opinion (M.D. 15); that Question No. 2 demonstrates the hypothetical nature of Question No. 1 (M.D. 17); that Question No. 4 is hypothetical (M.D. 23). But nowhere in appellees' motion is anything said further explaining or justifying the argument.

The questions presented by appellants are not hypothetical. Chapter 353 and Chapter 61 expressly authorize an urban redevelopment corporation to acquire land by eminent domain and then to sell such land at any time without regard to the accomplishment of a public purpose, and the purchaser may own such land free from any of the conditions or restrictions of such chapters (Sec. 353.150-4, App. 76; Sec. 61.230(c), App. 102). Appellants are not attacking said chapters in a vacuum nor asking for advisory opinions on hypothetical fact situations. Said chapters and provisions have been acted upon by appellees. Ordinance 29352 enacted by appellee City of Kansas City, Missouri, pursuant to said chapters, authorizes appellee West Side to acquire land by eminent domain (Articles XVII, XXII, Ordinance 29352, App. 109-111). Said Ordinance 29352 also expressly grants the same power of sale to West Side as is granted by Chapter 353 and Chapter 61 (Paragraph 14, Supplemental Contract, App. 125, 126).

Any valid provisions in the urban redevelopment laws are inextricably tied up with the invalid provisions, as recognized in the *Raines* case (80 S. Ct., l.c. 524). Thus, for one example, the right of sale without doing anything to fulfill the public purpose is permitted by Section 353.150-4 (App. 76). That is a subsection of Section 353.150 entitled "Borrowing of money and giving of security by corporation" (App. 75). Thus, the right of sale, to which objection is made, is an integral, necessary part of the whole urban redevelopment law because it is incident to the contemplated necessity of borrowing money and giving of security. Appellee West Side contemplates mortgage financing (App. 108, 124, 125).

An attempt has been made to cure the unconstitutional defects by the separate contractual agreement between the City and West Side. The question remains whether such

patchwork action can supply constitutional validity, where originally there is no constitutional validity.

In *Wuchter* v. *Pizzutti*, 276 U.S. 13, 48 S. Ct. 259, a New Jersey statute was challenged as violating the 14th Amendment. The statute provided for service of process on a non-resident driver of an automobile by leaving process with the Secretary of State of New Jersey. Notice of the proposed execution of an interlocutory judgment was personally served on the defendant in Pennsylvania. The defendant did not appear. Final judgment was entered. An appeal was taken to the Supreme Court of the United States. Mr. Chief Justice Taft delivered the opinion of the Court, stating on page 262 (48 S. Ct.):

> "But it is said that the defendant here had actual notice by service out of New Jersey in Pennsylvania. He did not, however, appear in the cause *and such notice was not required by the statute. Not having been directed by the statute it cannot, therefore, supply constitutional validity to the statute or service under it* (Many cases cited)." (Our emphasis).

The Supreme Court thereupon reversed the judgment for the plaintiff, holding the New Jersey statute unconstitutional despite the evidence that the defendant had actual notice by service. Similarly, in the instant case, the contractual provision between the City and West Side requiring completion of the project in any event cannot give validity to laws which not only do not direct such completion prior to sale, but expressly permit sale without restrictions prior to completion.

Furthermore, appellants claim that such contractual provision between the City and West Side that "West Side, its successors and assigns shall complete . . ." the redevelopment construction does not cure the unconstitutional power of sale without restrictions provided in Chapter 353, Chap-

ter 61 and Ordinance 29352. Such contractual provision between West Side and the City is not binding on a purchaser who has made no contract with the City, received no special ordinance or certificate of necessity, and who has no notice of any restrictions on use of the property, because there are no covenants running with the land recorded in the Office of the Recorder of Deeds.

Appellants do not seek a review of the "means" adopted to carry out an admittedly public purpose. Appellants contend that a law which permits the taking of property by eminent domain for a public purpose and at the same time permits sale and ownership of that property free from all restrictions on use and without requirement of achievement of such public purpose, is the equivalent of a law authorizing the taking of property by eminent domain without any public purpose or benefit, in violation of the equal protection clause of the Federal Constitution.

Appellants take no issue with the principle stated in *Berman* v. *Parker* (1954), 348 U.S. 26, 75 S. Ct. 98, that "Once the object is within the authority of Congress, the right to realize it through the exercise of eminent domain is clear." (348 U.S. 33; 75 S. Ct. 103; M.D. 9). In the instant case, however, the "means" of eminent domain have been granted to appellee West Side without a permissible object or public purpose, because no public purpose is required to be accomplished. The laws attacked not only fail to provide any "means" or "restrictions" to assume accomplishment of a public use or benefit for land taken by eminent domain, but they expressly and affirmatively provide for abandonment of all restrictions and the public purpose or object which justified use of the "means" of eminent domain in the first place.

A redevelopment law which provides in advance that upon clearing of the area and completion of redevelopment construction, if any, the land may be owned free from all restrictions and without regard to the public purpose or benefit, does not provide for a public purpose to justify exercise of the power of eminent domain, because it does not assure removal of blight for any period beyond the time taken to clear the area and perhaps erect a structure thereon.

Appellees infer that if the Missouri laws attacked herein are unique, the questions presented by this appeal are not substantial and not of national importance (M.D. 13). Although almost every state has an urban redevelopment law providing for redevelopment of blighted areas through a public authority or agency with continuing supervision by such public authority or agency, only ten states have laws providing for private redevelopment corporations, and of these, only Missouri permits sale of redevelopment property without continuing supervision by a public authority or agency in the public interest. Other states are enacting and amending and will enact and amend private redevelopment corporation laws. Whether these states are to be permitted to pattern such laws on the unique laws of Missouri or are to be required to have direct public supervision over and continuing restrictions on such private redevelopment corporations and the sale of redevelopment property, in the public interest, is a substantial federal question. Whenever the property of a private citizen is taken by the power of eminent domain for the private gain of another citizen under the guise that the taking is for a public benefit, a substantial federal constitutional question is involved. Whenever discriminatory tax benefits are given to one private citizen as against

other taxpaying citizens, under the guise that a public benefit will be achieved, when in fact there is no requirement for achieving such public benefit, a substantial federal constitutional question is directly involved. Those are the questions in the instant case.

In answer to this, appellees argue that the Supreme Court of Missouri's decision rests on a non-federal basis, which argument is patently unsound as hereinbefore shown. Appellees argue that the Supreme Court of Missouri relied on the Constitution of the State of Missouri and not the equal protection clause of the 14th Amendment (M.D. 21, 22). For this authority, they cite J. S. 33, 34 and quote therefrom. Immediately following the quotation appellees set forth, the Supreme Court of Missouri in its opinion states that the provisions attacked "do not conflict with the equal protection clause of either constitution", referring to the Missouri Constitution and the Constitution of the United States (J.S. 34).

Urban redevelopment in all of its phases represents a vast and necessary sociological and economic activity throughout the nation. It will be with us for many years to come. As sound as it may be sociologically and economically, and even philosophically, guidelines from this Court are of substantial federal importance to assure that such redevelopment laws are sound legally.

Wherefore, appellants request the Court to overrule appellees' Motion to Dismiss or Affirm.

Respectfully submitted,

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